[redacted]

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-898

NORVAL GOSS, et al.,
Appellants.

v.

EILEEN LOPEZ, ETC., et al.,
Appellees.

On Appeal from a Three-Judge United States District Court for the Southern District of Ohio, Eastern Division

INDEX

Relevant Docket Entries iii

Original Complaint (March 31, 1971) i

Motion to Dismiss (April 19, 1971) 15

Memorandum Contra Motion That Three Judge Court Hear Motion for Temporary Restraining Order (April 19, 1971) 25

Opinion and Notification of District Judge (September 27, 1971) 34-35

First Answer Filed (April 7, 1972) 37

Stipulations of Fact (October 10, 1972) 44
Stipulation of Parties (January 26, 1973) 58
Motion to Strike Stipulations (May 25, 1973) 59
Deposition of John Ellis (July 13, 1973) 61
Deposition of Philip Fulton (July 13, 1973) 84
Proceedings Before Honorable Joseph P. Kinneary, Including Exhibits 119
Defendants Exhibit B 286
Motion of All Defendants to Dismiss (July 17, 1973) 287
Amended Complaint (August 31, 1973) 292
Answer of Substitute Parties (September 12, 1973) 303
Opinion of District Court Included in Jurisdictional Statement at Pages 22-66
Order of District Court Included in Jurisdictional Statement at Pages 20-21
Judgment of District Court Included in Jurisdictional Statement at Pages 18-19

Civil Action No. 71-67

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

EILEEN LOPEZ, et al.,

Plaintiffs,

v.

HERBERT M. WILLIAMS, et al.,

Defendants.

RELEVANT DOCKET ENTRIES

3–31–71	Complaint filed. Summons Issued to M SDO
4–19–71	Memorandum Contra Motion that Three Judge Panel Hear Motion for Temporary Restraining Order, filed
4–19–71	Defendants Motion to Dismiss filed
9–27–71	Opinion—Plaintiff's Application for Convening of Three Judge Court is Meritorious, filed. Copy to Counsel
10– 4–71	Designation filed Members of the Court; Judge John W. Peck, USCJ, Judge Joseph P. Kinneary, USDJ and Judge Carl B. Rubin, USDJ. Copies of all Pleadings Sent to the Members of the Court. Copies of the Designation to all Counsel
4– 7–72	Answer filed (Sxtra Copies filed)

10–10–72 Stipulations of Fact filed by Plaintiffs

1–26–73 Stipulation of the Parties, filed. Copies to 3 Judges

5–25–73 Motion, Memo Aattached by Defts. for an Order Striking all Stipulations

7–13–73 Deposition of John Ellis and Phillip Fulton filed

7–16–73 Note: Oral Hearing Had Before Hon. Joseph P. Kinneary, Chief Judge

7–16–73 Exhibits Made a Part of this Record

7–17–73 Motion of all Defendants to Dismiss filed, With Memo Attached

8–21–73 Plaintiff's Motion for Substitution and Addition of Parties filed

8–31–73 Amended Complaint, filed

9–12–73 Answer on Behalf of Substitute Parties Norval Goss, James Furgason, James Boster, John Mulherin, John Ellis, Virginia Prentice, Thomas Moyer, Marilyn Redden, Marie Castleman, David Hamlar, Paul Langdon, and Watson Walker filed

9–12–73 Opinion filed (CMT Barker / Murphy / Curtin / Roos / Cit yAtty's. OFC Panel)

9–12–73 Order filed in Conjunction With the Opinion, This Declares That Section 33.13.66 of ORC and the Regulations of the Columbus Public Schools are UNCONSTITUTIONAL in That They Suspend Students Before a Hearing (Due Process of Law); it is ORDERED That

the Defendants Delete all References to the Suspensions and Disciplinary Transfers of Plaintiffs From the Records of the Columbus Public Schools.
(Cmt Barkan / Murphy / Curtin / Roos / City Atty's OFC / panel)

9–17–73 Judgment filed: re the Above Separate Opinion and Separate Order.
(Cmt. Barkan / Murphy / Curtin / Roos / City Atty's OFC / Panel)

11– 9–73 Notice of Appeal to the Supreme Court of the United States filed.
(Cmt. I. W. Barkan / Denis Murphy / Eric VanLoon / Kenneth Curtin)

11–28–73 Request for Certification of Record Pursuant to Rule 12 of the United States Supreme Court Rules filed

12–19–73 Record Certified to the United States Supreme Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. 71-67

Mrs. Eileen Lopez,
parent and next friend
of Dwight A. Lopez, a minor
1112 Melter Avenue
Columbus, Ohio 43206
and
Mrs. Martha Jean Adams, as
parent and next friend of
Betty Jean Crome, a minor
1666 E. 25th Street
Columbus, Ohio 43219
and
Mr. Floyd Sutton, as
parent and next friend
of Rudolph R. Sutton, a minor
2949 Fairwood
Columbus, Ohio
and
Mrs. Dollie Vance, as
parent and next friend of
Tyrone Washington, a minor
1588 Burley Drive
Columbus, Ohio
and
Mrs. M. Katherine Cooper, as
parent and next friend
of Susan C. Cooper, a minor
1576 Koebel Court
Columbus, Ohio
and

Mrs. Delores Young, as
parent and next friend of
Deborah Kay Fox, a minor
3351 Southhampton Dr. E.
Columbus, Ohio
and
Mrs. Barbara Byars, as
parent and next friend
of Clarence L. Byars, a minor
1492 Venice Drive
Columbus, Ohio
and
Mrs. Veda Smith, as
parent and next friend of
Carl Smith, a minor
2295 Vadis
Columbus, Ohio
and
Mr. Freddie Robinson, as legal
guardian and next friend of
Bruce Harris, a minor
1456 Wayland Drive
Columbus, Ohio
on behalf of themselves and all
others similarly situated

Plaintiffs,

vs.

Herbert M. Williams, individually
and as Director of the Department
of Pupil Personnel of the
Columbus Public Schools
270 East State Street
Columbus, Ohio 43215
and

Calvin Park, individually and
as Principal of Central High
75 Washington Boulevard
Columbus, Ohio 43215
and
Philip F. Fulton, individually
and as Principal of
Marion-Franklin High School
1265 Koebel Road
Columbus, Ohio 43207
and
Frank D. Mason, individually
and as Principal of
McGuffey Junior High School
2632 McGuffey Road
Columbus, Ohio 43211
and
Harold H. Eibling, as
Superintendent of the
Columbus Public Schools
270 East State Street
Columbus, Ohio 43215
and
THE COLUMBUS BOARD OF EDUCATION
270 East State Street
Columbus, Ohio 43215

Defendants.

COMPLAINT

1. This is an action for injunctive and declaratory relief authorized by Title 42 U.S.C. Section 1983 to secure rights, privileges and immunities established by the First and Fourteenth Amendment to the Constitution of the United States.

JURISDICTION

2. The jurisdiction of this Court is invoked under Title 28 U.S.C. Section 1343(3) providing for original jurisdiction of this Court in suits authorized by Title 42 U.S.C. Section 1983 and under Title 28 U.S.C. Sections 2201 and 2202 relating to declaratory judgments.

3. Plaintiffs respectfully request that a three-judge Court be convened pursuant to Title 28 U.S.C. Section 2281 in that plaintiffs seek to enjoin the enforcement of State Statute by an officer of the State on the grounds that said statute and its implementation violate the Constitution of the United States.

CLASS ACTION

4. Plaintiffs bring this action on their own behalf and on behalf of all other students residing in the City of Columbus who are similarly situated and affected by the policy and usage complained of herein. The members of the class on whose behalf plaintiffs sue are so numerous as to make it impracticable to bring them all individually before this Court. There are common questions of law and fact involved and plaintiffs' claim is typical of the claim of the entire class. Plaintiffs fairly and adequately represent and will protect the interest of the class. Defendants have acted on grounds generally applicable to plaintiffs' class. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

DEFENDANTS

5. Defendant Herbert M. Williams is and was at all times material hereto the Director of the Department of Pupil Personnel of the Columbus Public Schools.

6. Defendant Calvin Park is and was at all times material hereto the Principal and Chief Administrative officer of Central High School.

7. Defendant Philip E. Fulton is and was at all times material hereto the Principal and Chief Administrative officer of Marion-Franklin High School.

8. Defendant Frank D. Mason is and was at all times material hereto the Principal and Chief Administrative officer of McGuffey Junior High School.

9. Defendant Harold H. Eibling is and was at all times material hereto Superintendent of Schools of the Columbus Public Schools and is the executive and administrative officer of the Columbus Board of Education pursuant to Section 3301.11 of the Ohio Revised Code.

10. Defendant Columbus Board of Education is and was at all times material hereto entrusted with the management and control of all matters relating to the Columbus Public Schools pursuant to Chapter 3313 of the Ohio Revised Code.

CLAIM OF DWIGHT LOPEZ

11. Mrs. Eileen Lopez is the parent and natural guardian of Dwight Lopez, a minor, 19 years of age on whose behalf she has filed suit. Dwight Lopez is in the 12th grade at Central High School.

12. Lopez was suspended without prior hearing on the 26th of February by defendant Calvin Park, principal Central High School. Lopez was advised of the suspension in writing by a letter mailed to him and received February 27, 1971. No return date was fixed in his suspension. On March 1, 1971 Mr. and Mrs. Lopez were advised that they would have to appear at the Board of Education before Dwight Lopez could return to school.

13. On March 5, 1971 the School Board acting through defendant Herbert M. Williams delivered a let-

ter to Mr. and Mrs. Lopez advising them to appear March 8, 1971 at 8:30 A.M. Because of a demonstration being conducted at the Board of Education offices that morning neither Dwight or Mr. and Mrs. Lopez appeared at the Board as scheduled. No new date has been fixed for appearance before the Board. Dwight Lopez has not been advised of the complete and specific reasons for his suspension, and no hearing has been held concerning being readmitted to Central High School, and he is being denied an opportunity to continue his education there.

14. Following March 8, 1971 Mrs. Lopez called the School Board on several occasions, as did her daughter, Alma Robinson, but no new date was set for hearing. Mrs. Robinson thereafter wrote to the School Board on March 22, 1971 and by letter dated March 25, 1971 received March 26, 1971 from defendant, H. M. Williams, Mrs. Lopez was advised that since Dwight had missed his appointment March 8, 1971 and had made no attempt to make a new appointment, he was granted permission to report to the adult day school at Nelson Road.

15. To the date of the filing of this Complaint no hearing has ever been held in Dwight Lopez's case and he has not been advised in writing the reason for his suspension or expulsion from the regular day school of Central High School.

CLAIM OF BETTY JEAN CROME

16. Mrs. Martha Jean Adams is the parent and natural guardian of Betty Jean Crome, a minor, 13 years of age.

17. Betty Jean Crome was suspended from school by defendant Frank Mason, principal of McGuffey Junior High School. The plaintiff Betty Jean Crome was suspended from McGuffey Junior High School, where she is a student in the 7th grade on the 8th day of March,

1971 without prior hearing. Betty Jean Crome was advised that she was to report to school with her mother on March 15, 1971. Mrs. Adams was unable to be with her daughter on readmission however and that requirement was relaxed.

18. Betty Jean Crome was readmitted to school on the 15th day of March and no hearing was held on the reasons for suspension and said suspension has become part of her permanent school record.

CLAIM OF RUDOLPH R. SUTTON

19. Floyd Sutton is the parent and natural guardian of Rudolph Sutton, a minor 19 years of age on whose behalf he has filed suit. Rudolph Sutton is a student at Marion-Franklin High School in the 12th grade.

20. Rudolph Sutton was suspended from school on the 15th day of March, 1971 for a period of 10 days. By letter dated March 16, 1971 Rudolph Sutton was notified that he was suspended until March 25, 1971 and that the Pupil Personnel Department would notify him of further disposition of his case in a letter sent by Oscar Gill acting for the defendant Fulton principal of Marion-Franklin High School.

21. No hearing was ever held in the Sutton case and on the 25th day of March upon returning to Marion-Franklin, Rudolph Sutton, and his mother who accompanied him, were advised that they would receive a letter in the mail concerning his case.

22. A letter dated that March 25, 1971 advised Mr. and Mrs. Sutton that their son was "to report to South High School for balance of 1970-71 school year. (adjustment)" The letter was signed by defendant H. M. Williams, Director Pupil Personnel. Plaintiff Rudolph Sutton has never requested a transfer from Marion-Franklin High School and no hearing or reason in writing were

given to Sutton prior to said notice of transfer. Rudolph Sutton believes said suspension have become part of his permanent school record.

CLAIM OF TYRONE WASHINGTON

23. Mrs. Dollie Vance is the parent and natural guardian of Tyrone Washington, a minor 18 years of age on whose behalf she has filed suit.

24. Tyrone Washington on the 15th day of March, 1971 was a student at Marion-Franklin High School from which he was suspended for a period of ten days. In a letter dated March 16, 1971 the parents of Tyrone Washington were advised of the suspension and that "The Pupil Personnel Department of the Columbus Board of Education will notify you concerning a disposition of your case". No hearing was held prior to or subsequent to suspension.

25. By letter dated March 23, 1971 Tyrone Washington parents were notified that he had been summarily transferred to Mohawk Junior High School for the balance of the school year. No transfer had been requested and no hearing has been held concerning said transfer. Tyrone Washington believes said suspension and transfer has become a permanent part of his school record.

CLAIM OF SUSAN C. COOPER

26. Mrs. M. Katherine Cooper is the parent and natural guardian of Susan C. Cooper, a minor 16 years of age on whose behalf she has filed suit. Susan C. Cooper is a student at Marion-Franklin High School.

27. Susan Cooper was suspended from school without prior hearing for a period of ten days on March 15, 1971. On March 17, 1971 Mrs. Katherine Cooper received a letter from Oscar R. Dill acting on behalf of the defendant Fulton, principal of Marion-Franklin High School. No hearing was held prior to March 25, 1971 concerning

said dismissal. By letter of March 16, 1971 Mrs. Cooper was advised of an 11:00 A.M. conference in Mr. Gill's office on the date of Susan's return. Susan Cooper believes said suspension will become part of her permanent record.

CLAIM OF DEBORAH KAY FOX

28. Mrs. Delores Young is the parent and natural guardian of Deborah Kay Fox, a minor 16 years of age on whose behalf she has filed suit. Deborah Kay Fox is a student at Marion-Franklin High School in the 10th grade.

29. On the 10th day of March, 1971 Deborah Kay Fox was suspended from school without prior hearing for a period of ten days. On the 11th day of March, 1971 Mr. and Mrs. William Young were advised of the suspension of Deborah Kay Fox until Friday, March 19, 1971. On March 19, 1971 when she attempted to return to school, Deborah Kay Fox was suspended until March 29, 1971 or "until contacted by Mr. Robert Carter or his representative regarding your daughter's school placement". Miss Fox was advised personally by Mr. Kollmer, as agent for the defendant Fulton that she was not to return to Marion-Franklin.

30. No hearing has ever been held concerning said suspension and neither Deborah Kay Fox or her parents have ever requested a transfer. Miss Fox believes the suspensions she has received have become a permanent part of her school record. Miss Fox was advised on March 29th that she has been transferred to South High School.

CLAIM OF CLARENCE L. BYARS

31. Mrs. Barbara Byars is the parent and natural guardian of Clarence L. Byars, a minor 16 years of age. Clarence L. Byars is in the 11th grade at Marion-Franklin High School.

32. On the 15th of March, 1971, Clarence L. Byars was suspended from school for a period of 3 days. On the 17th day of March, 1971 the parents of Clarence L. Byars were advised that Clarence was suspended and that he was to return to school on the 18th day of March, 1971. No hearing was held prior to his suspension and Clarence Byars was not informed in writing of the reasons for his suspension until two days after it occurred and was never given an opportunity to contest said suspension. Clarence L. Byars believes said suspension will become part of his permanent school record.

CLAIM OF CARL SMITH

33. Mrs. Veda Smith is the parent and natural guardian of Carl Smith, a minor, 18 years of age on whose behalf she has filed suit. Carl Smith is a student in the 12th grade at Central High School. Carl Smith was suspended from Central High School by the defendant Calvin Park, principal, on the 26th day of February, 1971. Smith was advised of suspension on February 27, by letter. No definite date of return was given to the plaintiff Smith and he has been permitted to be in school only on one day since his suspension, March 9, 1971. Smith has been advised that he may not return to school until he talks to someone at the School Board, no hearing has been held in his case since suspension February 26, 1971. Carl Smith continues to be denied an opportunity to complete his schooling.

CLAIM OF BRUCE HARRIS

34. Freddie Robinson is the legal guardian and next friend of Bruce Harris on whose behalf he has filed suit. Bruce Harris is a minor, 18 years of age and a student in the 12th grade at Marion-Franklin High School.

35. On the 22nd day of March, 1971, Bruce Harris was suspended from Marion-Franklin High School by Oscar

Gill, Assistant Principal. No hearing was held prior to his suspension and Harris was advised of the suspension by letter received March 24th, 1971. The letter advised Harris he was suspended until March 30, 1971 and that during the suspension "the Pupil Personnel Department of the Columbus School Board will review with you the contents of the letter of November 6, 1970".

36. When Harris returned to school on March 30, 1971, he was not readmitted and advised to make contact with the Pupil Personnel Department.

37. Harris remains out of school and believes said suspension will become part of his school record.

38. Defendants have acted pursuant to Section 3313.66 of the Ohio Revised Code, the Administrative Guide of the Columbus Public Schools, and the Policy Statement in Discipline of the Columbus Public Schools none of which provides any standards for the exercise of school administrator's disciplinary authority or fair proceedings through which a student has an opportunity to challenge the proposed disciplinary measure.

39. On information and belief, there are no other school rules or regulations relied upon by defendants as authorized aforesaid disciplinary actions.

40. Under color of State law Defendants have acted intentionally, deliberately, and knowingly in violation of the First and Fourteenth Amendments to the Constitution of the United States and Title 42 U.S.C. Section 1983, rendering defendants liable to plaintiffs in law and equity.

CAUSE OF ACTION

41. Section 3313.66 of the Ohio Revised Code, Section 1010.04 of the Administrative Guide of the Columbus Public Schools, and the Columbus Policy Statement in Discipline provide no ascertainable standards of conduct for violation of which high school students may be

suspended and expelled. Said statute, administrative Guide, and Policy Statement are unconstitutional because their vagueness and overbreadth deprive students of rights secured under the First and Fourteenth Amendments to the Constitution of the United States.

42. Section 3313.66 of the Ohio Revised Code Section 1010.04 of the Administrative Guide of the Columbus Public Schools, and the Columbus Policy Statement in Discipline authorize the suspension and expulsion of high school students without prior notice and a hearing with such minimal rights as a written statement of the reasons for the proposal discipline, the right to cross-examination, the right to pre-hearing discovery procedure, the right to submit relevant evidence and the right to be represented by counsel. Said statute, administrative Guide, and Policy Statement are unconstitutional because their lack of procedural safeguards deprives students of rights secured under the Fourteenth Amendments to the Constitution of the United States.

43. In the instant case defendants have effected suspensions, expulsions, and involuntary transfers of students without prior hearings which comport with minimal standards of due process. Defendants actions have been arbitrary, unequal and discriminatory in violation of plaintiffs rights secured by the First and Fourteenth Amendments to the Constitution of the United States.

PRAYER FOR RELIEF

44. Wherefore, plaintiffs respectfully pray that this Court:

(1) Assume jurisdiction of this cause and convene a three-judge district Court to determine the controversy pursuant to Title 28 U.S.C. Section 2281.

(2) Enter a preliminary and a final order pursuant to Title 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that Section 3313.66 of the Ohio Revised Code is unconstitutional.

(3) Enter a preliminary and a final order pursuant to Title 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that the administrative Guide and the Policy Statement on Discipline of the Columbus Public Schools insofar as they relate to suspensions and expulsions are unconstitutional.

(4) Issue a preliminary and a permanent injunction restraining the defendant, their successors in office, agents and employees from further enforcement of the unconstitutional provisions of their discipline policy and Section 3313.66 of the Ohio Revised Code.

(5) Issue a preliminary and a permanent injunction ordering that plaintiffs' school records be expunged of any notation of the aforementioned suspensions and that plaintiffs be allowed to make up any school work or tests occurring during their absence from school.

(6) Maintain jurisdiction of this cause until such time as defendants establish a hearing procedure in conformity with the requirements of the Fourteenth Amendment to the Constitution of the United States.

(7) Award plaintiffs their costs and disbursements incurred herein together with such further alternative relief as may seem just and equitable.

I. W. BARKAN
Trial Attorney
8 East Broad Street
Columbus, Ohio 43215
Phone: 221-4221

Of Counsel:
KENNETH C. CURTIN
Legal Aid & Defender Society
755 North High Street
Columbus, Ohio
294-3276

DENIS J. MURPHY
8 East Broad Street
Columbus, Ohio 43215
228-6135

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION
(Title omitted in printing)
Civil Action 71-67

MOTION TO DISMISS

Now come defendants and move this Honorable Court for an order dismissing plaintiffs' complaint for the reasons that:

1. The complaint in its present form does not allege facts upon which relief can be granted under Title 42, U.S.C.A., Section 1983.

2. The Court lacks jurisdiction to grant plaintiffs' request for a declaratory judgment under Title 28, U.S.C.A., Sections 2201 and 2202, for the reason that the complaint and facts recited therein fail to disclose the presence of a justiciable case or controversy with respect to the constitutional validity of Section 3313.66 of the Ohio Revised Code in that the facts recited do not demonstrate that the statute directly applies to these plaintiffs, or that their interests are adversely affected by the operation of the statute.

JOHN C. YOUNG,
City Attorney
WILLIAM J. MELVIN
Chief Trial Attorney, of counsel
THOMAS A. BUSTIN
Senior Assistant City Attorney
Trial Attorney
Attorneys for Defendants
City Hall, 90 West Broad Street
Columbus, Ohio, 43215
Phone: 461-7460.

MEMORANDUM IN SUPPORT OF MOTION

In the present case, as demonstrated by the complaint, plaintiffs bring their action under the Civil Rights Act of 1871, 42 U.S.C.A., Section 1983, and as a request for a declaratory judgment under 28 U.S.C.A., Sections 2201 and 2202, seeking to draw in question the constitutional validity of Section 3313.66 of the Ohio Revised Code.

The statute (Section 3313.66 of the Ohio Revised Code) which is claimed to be constitutionally invalid, provides as follows:

> "The superintendent of schools of a city or exempted village, the executive head of a local school district, or the principal of a public school may suspend a pupil from school for not more than ten days. Such superintendent or executive head may expel a pupil from school. Such superintendent, executive head, or principal shall within twenty-four hours after the time of expulsion or suspension, notify the parent or guardian of the child, and the clerk of the board of education in writing of such expulsion or suspension including the reasons therefor. The pupil or the parent, or guardian, or custodian of a pupil so expelled may appeal such action to the board of education at any meeting of the board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the board may hold the hearing in executive session but may act upon the expulsion only at a public meeting. The board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended or expelled from any school beyond the current semester."

While the Ohio courts have not had an opportunity to consider the constitutional validity or lack thereof of the above quoted section, it is apparent from even a cursory reading and examination of the section that it does not

directly apply to the plaintiffs in this case, nor does it standing alone affect any constitutional right secured to these plaintiffs. In fact, the operation of the statute is directed not at these plaintiffs, either in a positive or negative manner, but instead is in the nature of a restriction placed upon the broad and comprehensive power traditionally possessed by defendants.

With respect to the first portion of this motion directed to the question of whether or not the complaint in its present form is sufficient to recite a cause of action cognizable under the provisions of Section 1983, it is important to examine the complaint in the context of the following principles which in substance govern the formulation of actions under Section 1983: (1) a person acting under color of law must engage in conduct, (2) which subjects the complaining party or parties to the deprivation of rights, privileges or immunities secured by the constitution and laws of the United States. *Sinchak v. Parente*, 262 F. Supp. 79, *Basista v. Weir*, 340 F.2d 74.

In applying the above principles, the meaning of the term "under color of law" is of particular significance. In *United States v. Classic*, 313 U.S. 299, 326, the term was defined in the following manner:

> "*Misuse of power, possessed by virtue of state law* and made possible only because the wrong-doer is clothed with the authority of state law, is action taken under color of state law." (Emphasis added)

In addition to the above principles and definition which has not been changed or abandoned, see *Monroe v. Pape*, 365 U.S. 167, equally important to the resolution of the first portion of this motion is the additional principle supported by a majority of the courts, namely, that a person seeking to invoke the Civil Rights Act

must plead highly specific facts in order to bring themselves within the framework of the act. Such a principle insures that a justiciable controversy will exist in fact before a federal court need intervene under the Civil Rights Act. *Dann v. Gazola*, 216 F.2d 709, *Powell v. Workmen's Compensation Bd. of State of New York*, 327 F.2d 131, *Sinchak v. Parente, supra, Pugliano v. Staziak*, 231 F. Supp. 347, *aff'd.* 345 F.2d 797, *Wayandt v. Masons Stores, Inc.*, 279 F. Supp. 283, *Crawford v. Lydick*, 179 F. Supp. 211, *aff'd.* 280 F.2d 426, and *Daly v. Peterson*, 278 F. Supp. 88. This principle is well stated in *United States v. Bolsinger*, 211 F. Supp. 199, wherein the court at page 201 pointed out:

> "In actions of this nature (under the Civil Rights Act) highly specific factual averments are required to defeat a motion to dismiss. General allegations when unsupported by the complaint read as a whole have been consistently rejected as insufficient." (Parenthetical material added)

It is clear from a review of the authorities at the present time that a school board and the local school officials possess historical inherent power with respect to the operation of the schools and conduct of students, and may exercise that power, absent the infringement of any specific constitutional right, without the necessity of conducting due process hearings comparable to those now required or adhered to in both the civil and criminal courts. In other words, a study of the cases in general will demonstrate that the cases have not imposed upon the school board or school officials the requirement that they conduct or utilize a formalistic type of hearing procedure or process prior to exercising their power with respect to the conduct and discipline of the students enrolled in the school. Absent the infringement of a sharply defined constitutional right, the only requirement imposed upon the school board or school officials is that they act in a reasonable fashion and that their decision not be an arbitrary one. *People v. University of Illinois*, 134 N.E.2d 635, *State, ex rel., Sherman v. Hyman*, 171 S.W.2d 822, *cert. den.* 319 U.S. 748, *Due v. Florida A. & M. University*, 333 F. Supp. 396, *Dixon v. Alabama State Board of Education*, 294 F.2d 150, and *Vermilion v. State*, 110 N.W. 736. The comprehensive authority discussed herein as possessed by the school board and school officials has recently received renewed recognition absent the infringement of a sharply defined constitutional right. This renewed recognition can be found in the cases of *Epperson v. Arkansas*, 393 U.S. 97, 104; 21 L. Ed. 228, 234; and *Tinker v. Des Moines Community School District*, 393 U.S. 503, 507; 21 L. Ed.2d 731, 738. A close and careful examination of the above cases and the line of cases of which the *Tinker* case, *supra*, forms a part, will disclose that the federal courts have intervened in the affairs of the local school board and school officials to strike down particular statutes or rules only in those cases where the statute or rule infringed upon a sharply defined and protected constitutional right. See, for example, the recent case of *Madera v. Board of Education of City of New York*, 267 F. Supp. 356, 386 F.2d 778, 784-785, *cert. den.* 390 U.S. 1028, wherein the concept of due process as it generally applies to student discipline and the right to counsel possessed by students was reviewed. The cases will be searched in vain for a case in which the federal courts have intervened in the operation of the local schools as it relates to the conduct and discipline of the students for the purpose of imposing upon the school board generally the requirement of a formalistic

type of due process hearing, absent the infringement of a sharply defined and protected constitutional right.

When the complaint is tested in light of the above cases and principles it is readily apparent that the complaint does not allege with preciseness and clarity such facts as demonstrate a misuse of power possessed by virtue of state law on the part of these defendants. Implied in the allegations of plaintiffs' complaint, including the conclusions set forth therein is the theory that defendants have denied plaintiffs' due process by apparently not providing them the formalistic type of due process hearing normally required in both the civil and criminal courts at the present time. Such an allegation of denial of due process did not comport with the normally accepted conception of due process. *Cafeteria Workers v. McElroy*, 367 U.S. 886, 6 L.Ed.2d 1230, 1235, 1236. Compare the complaint with the principles set forth in *Madera and Bolsinger* cases, *supra*. When the factual allegations are separated from the conclusions and the complaint viewed as a whole, a problem purely local in character appears.

In light of the above line of cases, and in light of the very recent case of *Davis v. Ann Arbor Public Schools*, 313 F. Supp. 1217, which reviewed some of these cases and the concept of due process in the general operation of the school, including the general action taken with respect to the conduct and discipline of the students the conclusion is clear that the weight of authority is to the effect that in the general operation of the school and in particular in the administration of discipline to the students absent the infringement of a sharply defined constitutional right, the concept of due process does not require a certain type structured or formalized hearing in order for the action taken to be valid. The

allegations of the subject complaint, particularly when it is noted that the statute challenged does not operate expressly with respect to the students nor does it operate or govern sharply defined constitutional rights, coupled with the additional fact that the complaint does not disclose that the local procedure is final, places the subject complaint within the framework of this line of cases and the theory announced. Based on the weight of that authority and on the fact that utilizing the principles and rules announced and set out above, it is clear that the subject complaint does not set forth such a particularized set of facts as should entitle these plaintiffs to invoke the shelter of the Civil Rights Act. Absent any allegation with respect to the validity of Section 3313.66 of the Ohio Revised Code, the subject complaint does not set forth facts sufficient to bring it within the framework of Section 1983. Stripped of the allegations with respect to the statute, the complaint does nothing more than set forth a conflict which has arisen in the daily operation of the school system which conflict does not show the presence of interference with sharply defined constitutional values. Absent the allegation with respect to the statute, a misuse of power cognizable under the Civil Rights Act does not exist within the framework of this complaint.

With respect to the second portion of the motion, examination of the complaint fails to disclose the presence of those allegations and facts necessary to support plaintiffs' request for relief by way of a declaratory judgment. In other words, the complaint in its present form does not disclose the presence of facts which demonstrate that plaintiffs are sufficiently affected by the statute (Section 3313.66 of the Ohio Revised Code) or its operation such as should warrant a federal court's

exercising its equity jurisdiction for the purpose of granting a declaratory judgment. In essence, when the complaint is read in light of the statute attacked, it is apparent that a justiciable controversy does not exist such as warrants either the convening of a three judge court or the determination by a single judge federal court of the constitutional validity of the statute. The principle involved in the resolution of the second portion of the motion is well set out in the case of *Alabama State Federation of Labor v. McAdory*, 325 U.S. 450, 463; 89 L. Ed. 1725-1736, wherein the Supreme Court points out:

> "Only those to whom a statute applies and who are adversely affected by it can draw in question its constitutional validity in a declaratory judgment proceeding as in any other. *Marye v. Parsons*, 114 U.S. 325; 29 L. ed 205, 5 S. Ct. 932, 962; *Tyler v. Judges of Ct. of Registration*, 179 U.S. 405, 45 L. ed 252, 21 S. Ct. 206; *Turpin v. Lemon*, 187 U.S. 51, 60, 61, 47 L. ed 70, 74, 75, 23 S. Ct. 20; *Arizona v. California*, 283 U.S. 423, 463, 464, 75 L. ed 1154, 1170, 1171, 51 S. Ct. 522; *First Nat. Bank v. Louisiana Tax Commission*, 289 U.S. 60, 65, 77 L. ed 1030, 1034, 53 S. Ct. 511, 87 ALR 840; *Ashwander v. Tennessee Valley Authority*, 297 U.S. 283, 80 L. ed 688, 56 S. Ct. 466; *Anderson Nat. Bank v. Luckett*, 321 U.S. 233, 242, 88 L. ed 692, 702, 64 S. Ct. 599, 151 ALR 824."

See also 22 American Jurisprudence 2d, "Declaratory Judgments," Sections 26 and 27, and Annotation 174, A.L.R. 549.

When the statute under attack is examined in the light of the above principles and atuhorities, it is apparent that the statute by its terms does not purport to operate in such a manner as to govern or proscribe the

conduct of plaintiffs, but instead was enacted for the purpose of providing a restriction against the inherent power possessed by defendants. In other words, the statute under attack operates to govern the conduct of defendants and has no direct operation with respect to the conduct of plaintiffs or with respect to the exercise of any sharply defined constitutional right or privilege possessed by plaintiffs. That being the case, it is readily apparent from the facts recited in the complaint when those facts are read in light of the statute that these plaintiffs are not adversely affected by the statute which by its terms can only be enforced against defendants. By no stretch of the imagination can the statute under attack be construed in such a manner as to lead to the conclusion that the terms of the statute were set up to govern any protected freedom possessed by any one of these plaintiffs. This fact becomes even more apparent when the statute and plaintiffs' complaint and arguments presented and filed at the present time are read in the light of the article to be found in 109 U. Pa. L. Rev. 67, where the concept of "overbreadth" is discussed at some length. Further, the plaintiffs do not directly seem to allege and cannot allege that the language of the statute directly abridges any right of free speech by its very terms. In addition to the above authorities, defendants would request the Court to read the statute in the light of the recent case of *Younger v. Harris*, 27 L. Ed. 2d, 669, at 679 and 680, wherein the Supreme Court discusses the question of abridgement of First Amendment rights.

When all the above authorities are read in light of the statute under attack, the conclusion is readily apparent that plaintiffs' request for a three judge court to render a declaratory judgment with respect to the constitu-

tional validity of the statute in a case where the statute under attack by its very terms does not operate in an adverse manner with respect to any protected rights possessed by these plaintffs is improper. The plaintiffs not possessing the requisite interest and standing to enable them to challenge the constitutionality of the statute under attack, defendants submit that the Court lacks jurisdiction to grant plaintiffs' request for a declaratory judgment.

It is respectfully submitted on the basis of all the foregoing authorities and reasons that plaintiffs' complaint should be dismissed as requested above.

Respectfully submitted,

JOHN C. YOUNG,
City Attorney

WILLIAM J. MELVIN,
Chief Trial Attorney, of counsel

THOMAS A. BUSTIN,
Senior Assistant City Attorney
Trial attorney

Attorneys for Defendants.

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title Omitted in Printing)
Civil Action 71-67

MEMORANDUM CONTRA MOTION THAT THREE JUDGE PANEL HEAR MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs' complaint and memorandum in support of their motion that a three judge court be convened to hear this matter contains allegations that Section 3313.66 of the Ohio Revised Code is unconstitutional on its face because of vagueness and overbreadth and further that the statute violates the First and Fourteenth Amendments to the United States Constitution. On the basis of these allegations plaintiffs seek injunctive relief preventing enforcement of the subject statute.

Plaintiffs are students who at one time or another have been suspended from a Columbus Public School for reasons not disclosed in the complaint or memorandum. Plaintiffs do not complain that the suspensions were not for good cause, but rather limit their complaint to the fact that the suspensions were made prior to the granting of a full and complete adversary hearing and without written notice.

The state statute under attack provides in substance that certain local school officials may suspend a pupil from school for not more than ten days and expel a pupil for a period of time not exceeding the then current semester. The statute further provides that in case of expulsion, the appropriate school official must notify the parent and clerk of the board of education of the expulsion and the reasons therefor within twenty-four hours.

This notice must be in writing. Thereafter the parent or guardian of the pupil may appeal the matter to the board of education and be heard against the expulsion. The board of education may thereafter, by a majority vote, reinstate the pupil. The decision of the board of education adverse to the pupil is then appealable to the Common Pleas Court, Court of Appeals, and the Ohio Supreme Court. In this regard the Court's attention is directed to Section 2506.01 of the Ohio Revised Code which reads in pertinent part as follows:

> "Every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the common pleas court of the county in which the principal office of the political subdivision is located, as provided in sections 2505.01 to 2505.45, inclusive, of the Revised Code, and as such procedure is modified by sections 2506.01 to 2506.04, inclusive, of the Revised Code.
>
> "The appeal provided in sections 2506.01 to 2506.04, inclusive, of the Revised Code is in addition to any other remedy of appeal provided by law." (See Exhibit for full text of the above statute.)

It is obvious from the factual allegations in the complaint and the provisions of the statute under attack that there is no issue in this case involving First Amendment rights.

In the absence of factual allegations that the suspensions resulted from the *reasonable* exercise of First Amendment rights the Court must presume that the suspensions were for good cause and reasonably necessary under the circumstances. Of equal significance in this regard is the fact that Section 3313.66 of the Revised Code, the statute under attack, neither prescribes nor

proscribes any course of conduct on the part of students. More precisely the statute in question does not directly involve the rights of students, but rather constitutes a substantial limitation on the authority of appropriate school officials to use suspension and expulsion as a disciplinary tool in the maintenance of good order in the schools and adherence to reasonable academic standards. For the foregoing reasons defendants respectfully submit that plaintiffs' allegation that the statute in question violates their First Amendment rights is frivilous and provides no justification for convening a three judge court to hear this matter.

The remaining issue is whether the power of appropriate school officials to suspend a pupil for a period not to exceed ten days without first providing the pupil with a full adversary hearing violates the due process clause of the Fourteenth Amendment where said suspension is for good cause. At the outset of this discussion defendants again direct this Court's attention to the fact that there is no allegation of bad faith on the part of the school officials, neither are the grounds for the suspensions or expulsions questioned. In light of this fact, it is respectfully submitted that no substantial constitutional question is presented. In support of this proposition we direct the Court's attention to the following quote from 12 ALR 2d 5, at page 57:

> "The plaintiff's pleading must affirmatively show the Federal Jurisdiction and that the case is one arising under the Constitution, laws, or treaties of the United States. Although the different decisions employ different phraseology in stating this requirement, there is agreement as to it, the courts having used such expressions as that the jurisdiction must be made to appear 'clearly,' unmistakeably,' and 'directly' and the cases affirm with unanimity that it

is not sufficient that jurisdiction may be inferred argumentatively from averments in the complaint; the averments must be positive and distinct according to the rules of good pleading; mere inference or suggestion of a Federal question is insufficient. As it is frequently stated, the Federal question must appear by a statement of facts in legal and logical form such as is required in good pleading.

"The plaintiff must state facts which will enable the court to see that the right he claims involves a Federal question with all the requirements previously stated as to the showing of such question. A mere conclusion of the pleader that the case presents a Federal question, or a mere statement or formal averment that the case is one arising under the Constitution, laws or treaties of the United States is inadequate. Time and again, in language varying in detail but not in substance, the courts have made this point clear. The Federal question must be presented not in mere assertion but in essence and effect."

Sections 2 and 3 of Article VI of the Ohio Constitution create common or public schools and vest control of the same in the Ohio Legislature. These sections in pertinent part provide as follows:

"§2 School Funds.
"The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state: * * *."

§3 Public School System; Boards of Education.
"Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: * * *."

Without question these provisions of the Ohio Constitution vest in the Legislature full power to regulate and control the public schools. In the exercise of this power

the Legislature enacted Section 3313.20 of the Revised Code which provides that boards of education shall make such rules and regulations as are necessary for their government, the government of their employees, and the pupils of the school. The State Legislature further granted certain school officials the right to suspend pupils for periods up to ten days without requiring a prior adversary hearing. Clearly the State Legislature saw the necessity for such power to be vested in those responsible for protecting school property and maintaining an academic environment that would provide a maximum opportunity for all children to obtain a good education. Implicit in the grant of this authority is a further legislative finding that suspension of a pupil for good cause up to a period of ten days would not seriously hamper a student's ability to successfully complete his school work by proper and diligent application of time and effort on his return to school. Thus in examining the Ohio Constitutional provisions regarding the public schools and laws enacted pursuant to the constitution we find no provision that grants to Ohio children an *unrestricted* right to attend school. Reasonable health and behavioral standards must be met as a condition precedent to the right to attend a public school. A punishment consisting of a ten-day suspension without an adversary hearing is certainly no more drastic in a constitutional sense than permitting reasonable corporal punishment of students by appropriate school officials (Section 3319.41, Ohio Revised Code) without a prior adversary hearing or the imposition of detention hours to be served after or in addition to regular school hours without prior adversary hearings. It is respectfully submitted, therefore, that brief suspensions of the right of a student to attend class is an equally reasonable and necessary disciplinary procedure well within the power of the Legislature to

establish and in the absence of arbitrary use by appropriate school officials is not subject to judicial veto. See for example the statement of Justice Fortas in the case of *Epperson v. Araknsas*, 393 U.S. 97, 89 S.Ct. 266, 21 L. Ed. 2d 228:

> "By and large, public education in our Nation is committed to the control of the state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values." (393 U.S. at page 104; 21 L. Ed. 2d at page 234)

Plaintiffs cite the recent case of *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731, as support for their proposition that even in limited suspension situations the Fourteenth Amendment to the U. S. Constitution requires prior adversary hearings. This case was a First Amendment case, which the instant case is not, but such wisdom is shown by the justices who deemed it necessary to write separate opinions. For example, Justice Black's statements which appear at 21 L. Ed. 2d 748:

> "Change has been said to be truly the law of life but sometimes the old and the tried and true are worth holding. The schools of this Nation have undoubtedly contributed to giving us tranquility and to making us a more lawabiding people. Uncontrolled and uncontrollable liberty is an enemy to domestic peace. We cannot close our eyes to the fact that some of the country's greatest problems are crimes committed by the youth, too many of school age. School discipline, like parental discipline, is an integral and important part of training our children to be good citizens—to be better citizens. Here a very small number of students have crisply and summarily refused to obey a school order designed to give pupils

who want to learn the opportunity to do so. One does not need to be a prophet or the son of a prophet to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders. This is the more unfortunate for the schools since groups of students all over the land are already running loose, conducting break-ins, sit-ins, lie-ins, and smash-ins. Many of these student groups, as is all too familiar to all who read the newspapers and watch the television news programs, have already engaged in rioting, property seizures, and destruction. They have picketed schools to force students not to cross their picket lines and have too often violently attacked earnest but frightened students who wanted an education that the pickets did not want them to get. Students engaged in such activities are apparently confident that they know far more about how to operate public school systems than do their parents, teachers, and elected school officials. It is no answer to say that the particular students here have not yet reached such high points in their demands to attend classes in order to exercise their political pressures. Turned loose with lawsuits for damages and injunctions against their teachers as they are here, it is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools rather than the right of the States that collect the taxes to hire the teachers for the benefit of the pupils. This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I, for one, am not fully persuaded that school pupils are wise enough, even with this Court's expert help from Washington, to run the 23,390 public school systems in our 50 States. I wish, therefore, wholly to disclaim any purpose on my part to hold that the

> Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students. I dissent."

See also Justice Harlan's dissenting opinion wherein he states:

> "I certainly agree that state public school authorities in the discharge of their responsibilities are not wholly exempt from the requirements of the Fourteenth Amendment respecting the freedoms of expression and association. At the same time I am reluctant to believe that there is any disagreement between the majority and myself on the proposition that school officials should be accorded the widest authority in maintaining discipline and good order in their institutions. To translate the proposition into a workable constitutional rule, I would, in cases like this, cast upon those complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns—for example, a desire to prohibit the expression of an unpopular point of view, while permitting expression of the dominant opinion.
>
> "* * *"

The courts and legislatures of the states have long recognized the necessity of vesting broad discretionary powers in local school officials, particularly in the area of pupil control. Even plaintiffs recognize that attendance in the public schools is not a guaranteed right to be exercised exclusive of adherence to the correlative duty to abide by all reasonable rules. In their motion for a temporary restraining order, plaintiffs request that defendants be restrained from expelling or suspending any student "for a period in excess of three (3) days without hearing and requiring the defendant school board to submit an interim procedure for handling of suspensions

pending final hearing in this case." One must conclude that in plaintiffs' eyes a three-day suspension is reasonable but a ten-day suspension is unreasonable in the absence of a prior adversary hearing.

It is respectfully submitted that this case does not involve a vague statute but rather a question of the power of a state legislature to provide a penalty for a pupil's disregard of school rules and regulations. This is a matter for the state courts to decide and presents no Federal Constitutional question within the purview of Title 28, Section 2281, United States Code, and the motion that a three judge court be convened should be denied.

Expulsion with the right of appeal to the Board of Education and the Ohio courts presents no new issue. The period between the barring of a pupil from school attendance and the hearing on appeal creates no new issue unless there is an allegation of unreasonable delay in hearing the appeal. Both procedures, temporary suspension and expulsion pending appeal, allegedly infringe upon the same qualified right in the same manner.

Respectfully submitted,

JOHN C. YOUNG,
City Attorney

WILLIAM J. MELVIN,
Chief Trial Attorney, of counsel

THOMAS A. BUSTIN,
Senior Assistant City Attorney
Trial Attorney

Attorneys for Defendants,
City Hall, 90 West Broad Street
Columbus, Ohio 43215
Phone: 461-7460.

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in printing)
Civil Action 71-67

NOTIFICATION AND CERTIFICATE

TO THE HONORABLE HARRY PHILLIPS, CHIEF JUDGE, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Pursuant to the provisions of Title 28, United States Code, Section 2284, I hereby notify you that the complaint in the instant action seeks to restrain the action of an officer of the State of Ohio under the authority granted by state statute on the grounds of the statute's unconstitutionality.

I certify that in my opinion this case requires the empaneling of a three judge court pursuant to Title 28, United States Code, Sections 2281, 2282 and 2284.

JOSEPH P. KINNEARY,
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in Printing)
Civil Action 71-67

OPINION

This matter is before the Court on the application of the plaintiffs for the convening of a three judge court under the provisions of Title 28, United States Code, Sections 2281 et seq, and the defendants' contra memorandum.

Plaintiffs have filed a complaint herein which seeks declaratory and injunctive relief for violations of the provisions of Title 42, United States Code, Section 1983 and to secure First and Fourteenth Amendment rights.

The jurisdiction of this Court is invoked under 28 U.S.C.A. §1343(3) and 28 U.S.C.A. §2201, 2202.

Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated. Plaintiffs are students in the Columbus Public Schools. Defendants are officials charged with the direction and administration of various aspects of the school system and the Board of Education itself.

Plaintiffs challenge the constitutionality of Section 3313.66, Ohio Revised Code, Section 1010.04 of the Administrative Guide of the Columbus Public Schools and the Columbus Policy Statement on Discipline for the reason that these provide no ascertainable standards of conduct for violation of which high school students may be suspended and expelled, and thus their vagueness and overbreadth deprive students of rights protected by the First and Fourteenth Amendments.

Further, plaintiffs allege that the above indicated statute and rules deny students due process in that they authorize suspension and expulsion of high school students without prior notice, without a hearing, without a written statement of the reasons for the discipline, without the right to cross examine witnesses, without the right to pre-hearing discovery procedure, and without the right to submit evidence or to be represented by counsel.

Plaintiffs also allege that the disciplinary actions against them have been arbitrary, unequal and discriminatory.

The prerequisites for the convening of a three judge court as set out in 28 U.S.C.A. §2281 are present in this case. This case clearly presents a substantial federal question. *Calloway* v. *Briggs*, 443 F.2d 296 (6th Cir. 1971).

WHEREUPON, the Court determines that the application is meritorious and therefore the Court will notify the Chief Judge of the Circuit that in its opinion a three judge district court is required in this case.

JOSEPH P. KINNEARY
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION
Filed Apr. 7, 1972
(Title omitted in Printing)
Civil Action No. 71-67

ANSWER

First Defense

1. Defendants without abandoning the motion to dismiss they filed on April 19, 1971, file the following as their answer, as requested by the Court.

2. Defendants admit that the action is denominated an action for declaratory and injunctive relief as alleged in paragraph one of the complaint and that the jurisdiction of this Court is invoked as alleged in paragraph two of the complaint, but deny that the facts alleged warrant the assertion of such jurisdiction.

3. Defendants admit that a three judge Court has been convened to hear the instant case.

4. By way of further answer, defendants deny the allegations contained in paragraph four of the complaint.

5. Defendants admit that Herbert Williams was Director of Pupil Personnel at the time the complaint was filed but aver that he has since retired and been replaced by Norval Goss; admit that Calvin Park was principal of Central High School; admit that Philip Fulton was principal of Marion-Franklin High School; admit that Frank D. Mason was principal of McGuffey Junior High School; admit that Harold H. Eibling was Superintendent of Schools of the Columbus Public School system at the time of filing of the complaint, but aver that he has since retired and has been replaced by John Ellis and admit

that the Columbus Board of Education manages the Columbus Public School system.

6. Defendants by way of further answer admit that Dwight Lopez, age nineteen (19) was suspended from Central High School on February 26, 1971, admit that a letter dated February 26, 1971 was forwarded to the parents of Dwight Lopez, which letter advised his parents that Dwight had been suspended for being involved in a school disruption and requested that a conference be arranged with his parents. Defendants further admit that a letter was sent to Dwight's parents advising them to appear March 8, 1971, at 8:30 A.M. for a conference but that the parents did not appear and defendants communicated by phone with Mrs. Lopez and were informed by Mrs. Lopez that they were organizing. Defendants deny that Dwight Lopez is being denied an opportunity to continue his education, deny the allegation that he has not been given a reason or reasons for his suspension, and aver that several attempts were made to set up a conference with Dwight's parents relating to his suspension without success. Defendants admit that Dwight Lopez was transferred to Adult Day High School on March 24, 1971; further aver that he is presently attending the school and deny for want of knowledge all other allegations contained in paragraph fourteen of the complaint.

7. By way of further answer, defendants admit that Betty Jean Crome was temporarily suspended from McGuffey Junior High School on March 3, 1971, and aver that such suspension was to continue until March 8, 1971; that a letter dated March 3, 1971, was forwarded to the parents of Betty Jean Crome advising them of the suspension, the period that it was to run and advising them to appear on March 8, 1971, at the school for a conference relating to the suspension and that Betty Jean Crome returned to school March 9, 1971. Defendants deny any

further allegations contained in paragraphs seventeen (17) and eighteen (18) of the complaint.

8. Defendants admit that Rudolph Sutton, age nineteen (19) was temporarily suspended from Marion-Franklin High School on March 15, 1971, effective March 16, 1971, admit that a letter dated March 16, 1971, was forwarded to the parents of Rudolph Sutton advising them of the suspension, the period that it was to run and the reasons for such suspension, the reasons given being that he was involved in a school disturbance and refused to follow the directions of the principal. Defendants admit that Rudolph Sutton was transferred to South High School and deny the allegation that he was not advised of the reasons for his suspension and specifically aver that Rudolph Sutton and his father were present at the disturbance which led to his suspension and aver that he has never requested defendant Board of Education to hold a hearing relating to his suspension or transfer.

9. By way of further answer defendants admit that Tyrone Washington was temporarily suspended from Marion-Franklin High School on March 15, 1971, effective March 16, 1971, such suspension to run until March 25, 1971, admit that a letter dated March 16, 1971, was forwarded to the parents of Tyrone Washington which letter notified his parents of suspension, the term of the suspension and gave as reasons plaintiff's involvement in a school disturbance and his direct refusal to follow directions of the principal, and admit that Tyrone Washington was transferred to East High School and graduated in June, 1971, and further aver that neither Tyrone Washington or his parents have requested a hearing or permission to appear before Defendant Board of Education concerning his suspension of transfer.

10. By way of further answer, defendants admit that Susan Cooper was temporarily suspended from Marion-

Franklin High School on March 15, 1971, effective March 16, 1971, and admit that a letter dated March 16, 1971 was forwarded to the parents of Susan Cooper, advising them of the suspension, which suspension was to run until March 25, 1971, and advising them of the reasons for such suspension, namely, her being involved in a disturbance at school and her showing disrespect for the principal during the disturbance which occurred on March 15, 1971. Defendants further aver that neither Susan Cooper nor her parents have requested a hearing before defendant Board of Education relating to her suspension and that Susan Cooper is presently attending Marion-Franklin High School.

11. Further answering, defendants admit that Deborah Kay Fox was temporarily suspended from Marion-Franklin High School on March 10, 1971 with such suspension to run until March 19, 1971, admit that a letter dated March 10, 1971 was forwarded to her parents advising them of the suspension, the term that it was to run and reasons, namely, engaging in defiant conduct and showing disrespect for the principal, admit that she was resuspended on March 19, 1971, and that a letter dated March 19, 1971, was forwarded to her parents advising them of the re-suspension. Defendants further admit that Deborah K. Fox was transferred to South High School, but aver that such placement was first discussed with Lorene Howard, field counselor for the Youth Commission, since Deborah K. Fox was under her supervision and further aver that Deborah K. Fox is attending South High School.

12. By way of further answer, defendants admit that Clarence Byras was temporarily suspended from Marion-Franklin High School on March 15, 1971, effective March 16, 1971; admit that a letter dated March 15, 1971, was forwarded to the parents of Clarence Byras advising them of the suspension, that the suspension was to run until

March 18, 1971, and giving them the reasons for such suspension, namely, his being involved in a school disruption, his refusal to go to classes and his demonstrating disrespect for the principal. Defendants further aver that neither Clarence Byras or his parents have requested a hearing before defendant Board of Education concerning the suspension and Clarence Byras is presently attending Marion-Franklin High School.

13. Further answering, defendants admit that Carl Smith, age eighteen (18) was suspended from Central High School on March 1, 1971, that a letter dated March 1, 1971 was forwarded to his parents advising them of the suspension, but aver that phone calls were made to his parents on March 2, 3 and 4, 1971 to arrange a conference concerning the suspension that a conference was arranged for March 5, 1971, and defendants were advised that Carl and his mother were on their way to keep the appointment but never appeared. Defendants deny that Carl Smith is being denied an opportunity to complete his education and aver that any delay which might have occurred in his return to school was occasioned by the conduct of Carl Smith and his parents, and that Carl Smith is presently attending Evening High School and is expected to graduate in June, 1972.

14. By way of further answer, defendants admit that Bruce Harris, age 19, was temporarily suspended on March 23, 1971, admit that a letter dated March 23, 1971, was forwarded to the parents of Bruce Harris, advising them of the suspension, the term of the suspension, namely, March 30, 1971, and the reasons, namely, his being involved in the disruption of an assembly and walking out of the assembly after the principal warned that such conduct would result in suspension.

15. Defendants by way of further answer admit that the provisions of Section 3313.66, Revised Code, proscribes the procedural conduct of defendants, and deny

each and every other allegation contained in the Complaint.

Second Defense

16. Defendants aver that the complaint in its present form fails to state a claim cognizable under Title 42, Section 1983, fails to state a claim demonstrating that a specific Constitutional right possessed by any of the plaintiffs had been violated; that the provisions of Section 3313.66, Revised Code, are procedural in nature and do not proscribe or prescribe conduct on the part of plaintiffs, acting as a limitation on the inherent power possessed by defendants, and that given the conduct on the part of plaintiffs as alleged herein, the temporary action taken by defendants was not arbitrary or unreasonable and fully comported with the due process requirements of the 14th Amendment to the United States Constitution.

Third Defense

17. Defendants aver that plaintiffs had adequate administrative remedies available to them to review the temporary suspensions, and an appeal by way of Chapter 2506 of the Revised Code which in light of the facts presented in this case should have been exhausted prior to bringing an action under Title 42, Section 1983.

Wherefore, the defendants and each of them demand judgment dismissing the Complaint, with costs.

CITY OF COLUMBUS,
DEPARTMENT OF LAW
JAMES J. HUGHES, JR.,
City Attorney
By THOMAS A. BUSTIN
Trial Attorney
and

ROBERT A. BELL
Associate Counsel
Attorneys for Defendants
City Hall, 90 West Broad St.
Columbus, Ohio 43215
Phone: 461-7460

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. 71-67
(Title omitted in printing)

STIPULATIONS OF FACT

1. Dwight Lopez in February of 1971 was nineteen (19) years of age and a student at Central High School. On February 26, 1971, Dwight Lopez was suspended from Central High School and a letter dated February 26, 1971, which letter is marked Exhibit 1(A), was forwarded to his parents. On March 1, 1971, the letter marked Exhibit 1(B) was received by his parents. On March 5, 1971, Mr. and Mrs. Lopez were advised of the meeting to be held March 8, 1971 as provided in the letter submitted as Exhibit 1(C). Prior to the suspension of Mr. Lopez, no hearing was held. Mr. and Mrs. Lopez did not attend the meeting scheduled for March 8, 1971. A demonstration was occurring in front of the administrative offices of the Columbus School District and Mr. and Mrs. Lopez could not get into the building by reason of the demonstration; however, Mr. and Mrs. Lopez did not at anytime communicate to defendants their inability to attend the meeting or reasons for not being able to attend the meeting. Dwight Lopez was transferred to the adult day school on March 25, 1971. (Defendants do not contest the fact that a transfer did occur but to object to the admissibility of such fact as having any bearing upon the determination of the constitutionality of Section 3313.66, Revised Code).

2. Betty J. Crome in March of 1971 was thirteen (13) years of age and a student at McGuffey Junior High School. On March 3, 1971, Betty J. Crome was suspended from McGuffey Junior High School and a letter dated

March 3, 1971, which letter is submitted as Exhibit 2, was forwarded to her parents. Betty J. Crome returned to McGuffey Junior High School on March 9, 1971.

3. Deborah Kay Fox in March of 1971 was sixteen (16) years of age and a student at Marion-Franklin Senior High School. On March 10, 1971, Deborah Kay Fox was suspended from Marion-Franklin Senior High School and a letter dated March 10, 1971, which letter is submitted as Exhibit 6(A), was forwarded to her parents. On March 10, 1971, a meeting was held between the school authorities and Deborah Kay Fox and her parents concerning said suspension. On March 19, 1971, Deborah Kay Fox was again suspended and a letter dated March 19, 1971, which letter is submitted as Exhibit 6(B), was forwarded to her parents. A meeting was held between Richard Kollmer, Assistant Principal, Deborah Kay Fox and her parents on March 19, 1971. On March 30, 1971, Deborah Kay Fox was transferred to South High School to complete her high school education. (Defendants do not contest the fact that a transfer occurred but do object to the admissibility of such fact as having any bearing upon the determination of the constitutionality of Section 3313.66, Revised Code.)

4. In Ohio by virtue of Section 3321.01, Revised Code, the compulsory school age is that age between six and eighteen.

5. The students named below on the date of suspension were over the compulsory school education age provided in Section 3321.01, Revised Code:

Dwight Lopez	Bruce Harris
Carl Smith	Rudolph Sutton

6. That Exhibit 10 is an authentic copy of Section 1010.04 of the Administration Guide.

7. That Herbert Williams, at the time of filing the Complaint, was Director of Pupil Personnel for the Co-

lumbus Public School System, and has since retired and has been replaced by Norral Goss.

8. That Philip Fulton, at the time of filing the Complaint, was principal of Marion-Franklin Senior High School.

9. That Frank D. Mason, at the time of filing the Complaint, was principal of McGuffey Junior High School but has since retired and has been replaced by John Mulherin.

10. That Harold Eibling, at the time of filing the Complaint, was Superintendent of the Columbus Public School System, but has since retired and has been replaced by John Ellis.

11. That Central High School, Marion-Franklin Senior High School and McGuffey Junior High School are part of the Columbus Public School system.

12. That the Columbus Board of Education is an entity as described in Section 3313.17, Revised Code, and has such management power as provided in Section 3313.47, Revised Code.

13. That the School administrators utilized the procedure provided in Section 3313.66, Revised Code.

14. That the students named in the within Complaint following suspension did not request a hearing before the Columbus School Board. The Ohio Revised Code Section 3313.66, the Administrative Guide and the Policy Statement on discipline do not provide for a hearing in the event of a suspension.

15. That the accumulative record card for Fox, Lopez, and Crome contains the following entries as a result of the suspensions set forth above:

Deborah Kay Fox — 3/10/72 Suspended
for Student Disruption
Dwight Lopez — None
Betty Crome — None

CITY OF COLUMBUS,
DEPARTMENT OF LAW

JAMES J. HUGHES, JR.,
City Attorney

By THOMAS A. BUSTIN
Trial Attorney

By ROBERT A. BELL
Associate Counsel

Attorneys for Defendants
90 W. Broad St.,
Columbus, Ohio
461-7460

Attorneys for Plaintffs

EXHIBIT 1A

Superintendent of Schools — Harold H. Eibling

CENTRAL HIGH SCHOOL
75 Washington Boulevard, Columbus, Ohio 43215

February 26, 1971

Mr. and Mrs. Manuel Lopez
831 Franklin Ave.
Columbus, Ohio

Dear Mr. and Mrs. Lopez:

We have had a continued problem in school for several days and today a group of students disrupted our complete school program.

Dwight was in the group and we need to have a personal conference with you and Dwight to determine what the problems may be.

Please keep him at home until a conference can be arranged. This will take some time. We will be communicating with you.

Respectfully,

CALVIN PARK
Principal

EXHIBIT 1B

Superintendent of Schools — Harold H. Eibling

CENTRAL HIGH SCHOOL
75 Washington Boulevard, Columbus, Ohio 43215
Telephone 224-3184

March 1, 1971

Mr. and Mrs. Emanual Lopez
831 Franklin Avenue
Columbus, Ohio

Dear Mr. and Mrs. Lopez:

It will be necessary for you to appear at the Board of Education before Dwight returns to school. I have given your telephone number to Mr. Williams of the Pupil Personnel office of the Board of Education. He will be in touch with you to set up an appointment.

Dwight is to remain home during the hours school is in session.

Yours truly,

JAMES C. FURGASON

EXHIBIT 1C

61 S. Sixth St.
Columbus, Ohio 43215
March 5, 1971

Mr. & Mrs. Emanual Lopez
1112 Miller Avenue
Columbus, Ohio

Dear Mr. & Mrs. Lopez:

An appointment has been arranged for you and your son, Dwight, to appear at the Pupil Personnel Office on Monday, March 8th, at 8:30 a.m.

Sincerely,

H. M. WILLIAMS, *Director*
Pupil Personnel

EXHIBIT 2

Superintendent of Schools — Harold H. Eibling

McGUFFEY ELEMENTARY SCHOOL
2832 McGuffey Road, Columbus, Ohio 43211

March 3, 1971

Mrs. Martha Jane Adams
1666 E. 25th Ave.
Columbus, Ohio 43219

Dear Mrs. Adams:

This is official notification that your son/daughter, Betty Jane Crome has been temporarily suspended from McGuffey Jr. High. This suspension will continue until March 8, 1971 at 10:45 at which time you are to accompany him/her to school for a conference. During this time he/she is to remain at home during school.

Yours respectfully,

FRANK D. MASON
Principal

EXHIBIT 6A

Superintendent of Schools — Harold H. Eibling

MARION-FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 10, 1971

Mr. & Mrs. William Young
3351 Southfield Drive, East
Columbus, Ohio

Dear Parents:

I have suspended Deborah from Marion-Franklin High School until Friday, March 19.

Deborah was extremely defiant, and disrespectful with the assistant Principal today.

During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

RICHARD KOLLMER
Assistant Principal

EXHIBIT 6B

Superintendent of Schools — Harold H. Eibling

MARION-FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 19, 1971

Mr. & Mrs. William H. Young, Jr.
3351 Southfield Drive, East
Columbus, Ohio

Dear Parents:

I have suspended Deborah Fox from Marion-Franklin High School until Monday, March 29, or until contacted by Mr. Robert Carter or his representative regarding your daughter's school placement.

During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

RICHARD KOLLMER
Assistant Principal

EXHIBIT 10

ADMINISTRATIVE GUIDE

Section 1010 — Discipline of Pupils

1010.01 — Disciplinary measures shall be reasonable and appropriate to the nature of the misbehavior of the offending pupil and in accordance with the holdings of Ohio courts of law.

1010.02 — Although no statute makes a specific mention of corporal punishment, Ohio courts have held that a teacher or principal may administer such punishment. In the Columbus Public Schools, corporal punishment may be used as a last resort and after all other means of punishment have proved ineffectual. Corporal punishment must be administered in the presence of at least one adult witness.

1010.03 — Under no circumstances shall punishment be cruel or excessive or administered from malice or passion.

1010.04 — Pupils may be suspended or expelled from school in accordance with the provisions of Section 3313.66 of the Revised Code.

EXHIBIT 11

COLUMBUS PUBLIC SCHOOLS

Policy Statement on Discipline

The belief that the Columbus Public School System has a responsibility to teach proper behavior patterns is based on the following premises:

1. The school must provide educational opportunities so every child may achieve to his fullest potential and become a contributing citizen in a democracy.

2. The child is a social being and as such must learn to recognize that certain types of behavior are necessary in a democratic society. Disciplined behavior is a basic need of such a society.

3. Discipline is a developmental need of each pupil. There is a feeling of security if limits are known to pupils and they live within appropriate limits.

4. Discipline has two major purposes: 1) securing a classroom atmosphere conducive to maximum educational achievement; 2) helping each pupil develop self control.

5. The development of an educational environment conducive to learning and individual self control is delegated to the school by society as its agency for perpetuating and improving the democratic way of life. Thus good discipline is a legitimate task and assigned responsibility of the school.

From these premises the following areas of responsibility develop:

Responsibility of the Pupils

Pupils shall accept the authority which has been delegated to the school by society.

Pupils shall respect those rules and regulations necesary for the orderly operation of the school and growth in citizenship.

Pupils shall respect school property, the rights of others, and the opinions of others. They must learn to accept the consequences of their decisions and behavior.

Pupils shall dress and groom themselves in a manner which will not infringe upon an atmosphere conducive to learning, and for the same reason shall maintain habits of personal cleanliness.

Pupils shall strive to develop habits of self-discipline that they may make positive contributions to the society in which they live.

Pupils shall behave in such a way that they will bring credit to themselves and their school.

Responsibility of Teachers

Teachers shall regard each pupil as an individual worthy of respect and dignity and shall help each pupil learn to regard himself in this manner.

Teachers shall present a program of instruction that will enable each pupil to achieve his full academic and social potential in each area of study.

Teachers shall help each pupil to understand the nature of acceptable and unacceptable behavior in the development of the desired goal: self-discipline.

Teachers shall set an example of acceptable behavior with respect to dress, grooming, coiffure, speech, and manners.

Teachers shall work with administrators and other staff personnel to promote a climate conducive to learning and achievement in the school.

Teachers shall accept responsibility for knowing and enforcing the rules and regulations of the school.

Responsibility of the Principal

The principal shall work with his staff to create an environment conducive to learning.

The principal shall involve the staff of specialized personnel, including school psychologists, school counselors, attendance officers, and health personnel, in dealing with individual and group behavioral problems.

The principal, with the advice of the staff, shall develop school rules and regulations that will encourage pupils to develop acceptable patterns of social behavior.

The principal shall consider initiating a student advisory group to aid in the implementation of school rules and regulations.

The principal, by virtue of his position of authority, shall keynote the approach to good discipline in his school. In this vital area of school affairs, he and his staff shall work cooperatively on problems of behavior. The administrator may deem it best to use forms of punishment not available to the teacher, such as corporal punishment or suspension. The final decision on the appropriate form of punishment to be employed rests with the administrator, since such responsibility has been delegated to him by the Board of Education.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in printing)
Civil Action No. 71-67

STIPULATION

Counsel for plaintiff and counsel for defendants stipulate the above captioned case may be determined upon its merits, the motion, pleadings, stipulations, and exhibits, and briefs which have already been filed in this cause.

CITY OF COLUMBUS,
DEPARTMENT OF LAW

JAMES J. HUGHES, JR.,
City Attorney

By _____
THOMAS A. BUSTIN,
Trial Attorney

Attorneys for Defendants
90 West Broad Street
Columbus, Ohio 43215
461-7460

ROBERT A. BELL,
Of Counsel

_____

_____

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT OF
THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in printing)
Civil Action No. 71-67

MOTION

All defendants herein respectfully move the Court to enter an order striking all stipulations which were filed in the above captioned cause for the purpose of submitting this case to this Court for a decision based on a stipulated set of facts and defendants specifically request that plaintiffs be placed upon the proper burden of proving the allegations contained in their complaint, it having been indicated by the Court that this case cannot be decided on stipulations and that a full trial will be necessary in this cause.

THOMAS A. BUSTIN,
Trial Attorney

Attorney for defendants
90 West Broad Street
Columbus, Ohio 43215
Phone: 614/461-7460

ROBERT A. BELL,
Of Counsel

MEMORANDUM

At a meeting called by the Court in the above captioned case on May 25, 1973, defendants were advised that the three judge panel convened in this case was unable to reach a decision of the case based upon the stipulations that had been submitted, and it was defendants' further understanding that the further or addi-

tional stipulations would not lead to a resolution of the problem, leaving the only recourse being that of a full evidentiary hearing on the complaint.

It being indicated that a full dress evidentiary hearing would be necessary in this cause, defendants herein request that all stipulations previously filed herein for the purpose of deciding this case on the basis of stipulations, be removed and that such full hearing be a hearing in which plaintiffs are required to prove the allegations contained in their complaint. In other words, defendants specifically request that plaintiffs be placed upon the proper burden of proof, to prove the allegations in their complaint.

Respectfully submitted,

THOMAS A. BUSTIN,
Trial Attorney

Attorney for defendants
90 West Broad Street
Columbus, Ohio 43215
Phone: 614/461-7460

ROBERT A. BELL,
Of Counsel

(CERTIFICATE OF SERVICE omitted in printing)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT
EASTERN DIVISION

Case No. 71-67

(Title omitted in printing)

Deposition of Doctor John Ellis, the Defendant herein, called by the Plaintiff as if on cross examination under the statute, taken before me, the undersigned, Deborah M. Guedry, an official reporter within and for the State of Ohio, at 270 East State Street, Columbus, Ohio, on Wednesday, June 27, 1973, commencing at 1:00 p.m., and concluding on the same day; pursuant to the stipulations of counsel hereinafter set forth; said deposition to be read in evidence on behalf of the Plaintiff upon the trial of the above entitled cause.

(page 2)

APPEARANCES:

PETER ROOS, Harvard, Center of Law, 71 Kirkland Avenue, Cambridge, Massachusetts, appearing on behalf of the Plaintiff.

DENIS MURPHEY, of the firm of Patchen, Murphey, and Allison, 8 East Broad Street, Columbus, Ohio, appearing on behalf of the Plaintiff.

DALE CRAWFORD, Official City Attorney, City Hall, Columbus, Ohio, appearing on behalf of the Defendant.

THOMAS BUSTIN, Official City Attorney, City Hall, Columbus, Ohio, appearing on behalf of the Defendant.

STIPULATIONS

It is agreed and stipulated by and between counsel for the respective parties herein that this deposition may be taken in shorthand by Deborah M. Guedry, who may

later, out of the presence of the witness, transcribe, or cause said shorthand notes to be transcribed; that all formalities as to the notice of the time and place of the taking of the said deposition and the qualifications of the officer before whom taken shall be expressly waived.

(page 3)

DOCTOR JOHN ELLIS.

being duly sworn to testify the truth, the whole truth, and nothing but the truth, as hereinafter certified, deposed and testified as follows:

CROSS EXAMINATION

By Mr. Roos:

Q. Doctor Ellis, could you state your full name and position in the Columbus School System? A. My name is John Ellis. I am Superintendant of Columbus Public Schools.

Q. And for how long have you held that position? A. I began my work on August 1, 1971.

Q. Prior to that time, could you briefly give us a rundown of your background, educationally and in your work experience? A. Prior to coming to Columbus, I was superintendant of the Lakewood City School District for five years. Prior to that I was superintendant of the schools in Massillon, Ohio. Prior to that I was a graduate student and had also been a teacher and school principal.

Q. For how many years were you a teacher? A. For three years.

Q. And of what grades? **(page 4)** A. I have taught at the fourth grade level, the sixth grade level, the seventh grade level, and the twelfth grade level.

Q. Okay. For how long were you a principal? A. I was a principal for three years.

Q. Okay. Is that of a high school and elementary school? A. I was principal in elementary school.

Q. Are you familiar with the suspension and expulsion procedures that were in effect in March of 1971, fully recognizing that you were not on the staff at that time? A. I am not fully acquainted with the procedures because I was not on the staff at that time.

Q. Do you have any knowledge concerning the procedures that are presently in effect? A. Yes. We currently have procedures that are in effect, and we are currently considering possible revisions.

Q. Do you have any knowledge concerning any changes from March of 1971 to the present procedures, of your own particular knowledge? A. Changes may have occurred, but I am not acquainted with what specifically they may be, if, in **(page 5)** fact, changes did occur.

Q. Okay. Could you tell us what written procedures there are in the Columbus schools for handling expulsions and suspensions? At the present time, excuse me. A. We have a document that has been circulated by the Department of Pupil Personnel Services with the authorization of the deputy which specify our procedures to be followed in the case of both suspension and expulsion.

Q. Is that something other than Section 1010 of the Administrative Guide. I show you this for your convenience. A. The document to which I referred is the supplementary procedure that would go with the Section 1010.

Q. I see. Do you have copies of that procedure in your possession? A. I believe I do. This is the latest copy is it not?

Mr. Roos: Off the record.

(Discussion off the record.)

Mr. Roos: On the record.

By Mr. Roos:

Q. Go ahead. **(page 6)** A. I have two documents here that would cover the question raised.

Q. Okay. Could you — do you have spare copies that we could have? A. Yes. You may have these if you wish.

Mr. Crawford: Can we mark these as Exhibits so that they will be submitted to the Court.

Mr. Roos: Plaintiff's Exhibit 1 is the document with a B at the top of the page. This is a memorandum addressed to all principals and administrative staff from the Department of Pupil Personnel. It is dated August 16, 1971.

Exhibit 2 has a C at the top. It is to the secondary principals from Norval Goss. It is dated February 21, 1973.

By Mr. Roos:

Q. Could you briefly explain what Exhibit 1 is and what Exhibit 2 is and how they are intermeshed, if they do at all? A. Exhibit 1 is a memorandum to all school principals and administrative staff summarizing administrative procedures for dealing with a variety of administrative concerns, specifically the attachments presented to you today. Those concerns include suspensions and expulsions and the procedure **(page 7)** by which principals will conduct such suspensions and expulsions or recommend the same. The document of February 21, concerns suspensions, expulsions, and adjustment transfers. It restates the previous policy and constitutes a reminder to principals of the procedures in effect.

Q. I refer to Exhibit 1, which is the August 16 document, and I note that at the bottom of my copy is stated that it is, "Part of a fourteen-page bulletin."

Do you know to what that refers?

A. Yes. The other part of the bulletin considered questions like baby sitters and nursery schools, transfers dealing with residents, illegal custody and guardianship, medical transfers, voluntary registration, involuntary

transfers, procedure by which the principals make these transfers. In essence, the document is dealing with many of the administrative problems related to the assignment and transfer of pupils. We did not give you the total document because I understood the point and the issue in our discussion to be that of the suspension question.

Q. Well, I would be interested in getting the entire thing if possible, if we could run off a copy. **(page 8)** A. We would be happy to provide the entire document.

Q. Now, we were to refer to the State statute 3313.66, the Administrative Regulation 1010 — I believe there is a following section — and to Exhibit 1 and 2 which you have just handed me. You would have a picture of every written procedure concerning suspensions and expulsions presently in effect; would that be a correct statement? A. don't know if it would include every written procedure or document related thereto. It certainly covers the section policies. I am not aware of other written documents, but I cannot attest that there are none.

Q. I see. Are there in addition any sort of oral procedures for handling — strike that.

In addition to these written documents outlining the suspension and expulsion procedures, have there been any conversations or oral meetings with school officials at which time additions or deletions to these written regulations may have been conveyed to principals?

A. I am not aware of any such meetings other than the standard administrative meetings that we have to review procedures. Such meetings, to my knowledge **(page 9)** are simply concerned with explaining the procedures and responding to questions, but not with the deletion or addition of items to that list.

Q. I see. Are there any internal procedures within the administrative office of the Columbus schools to insure that these regulations are carried out? A. That is a func-

tion of the deputy superintendent of schools, working with the Department of Pupil Personnel Services.

Q. I see. And you would not have any personal knowledge of these sorts of procedures to which I referred? A. The major procedure of which I am aware is the letter to the Department of Pupil Personnel Services when a suspension occurs, and the possible inquiring with the principal in the event that a conference would seem to be appropriate.

Q. Okay. On your own knowledge, could you outline how a typical suspension is meted out at the present time?

Mr. Crawford: I will object to that. I think the document is the best evidence for the procedure. I don't think there is any reason to reiterate. **(page 10)**

The Witness: The document constitutes the total procedure of the school system. I cannot speak to how each individual principal might administer it. To the best of my knowledge, the principals do follow those procedures.

By Mr. Roos:

Q. Let's back up for a minute or two.

Off the record.

(Discussion off the record.)

Mr. Ross: On the record.

By Mr. Roos:

Q. I have just reviewed Exhibit 1 and 2 which you previously handed to me. With respect to those exhibits, I have a couple of questions as to your interpretation of those.

First of all, the regulations or what not are silent, as I read them, as to reasons for suspension. Are there any additional regulations that spell out grounds for suspension?

A. I am not aware that the grounds for suspension are spelled out in any single system or document. Our schools do have school rules, and students are apprised of school

rules. The procedures and rules and regulations of the Board of Education — State, Federal, City law — could all **(page 11)** be areas that could be grounds for suspensions.

Q. I see.

Now, you state that each school has its own regulations; is that a correct statement of what you said?

A. Virtually each school does. There may be one or two. We have some very small schools that would not have a particularly extensive list of rules and regulations.

Q. Okay. Is there any essential place that these rules and regulations promulgated by the schools can be obtained? A. The various school rules that exist are not catalogued or organized in any single central place at the present time.

Q. Do you have any knowledge concerning the methods that these rules are conveyed to the pupils? Is there any standard procedure for conveying the rules that we are now talking about to the pupils? A. The typical methods would be school assemblies, announcements on the P.A. system, school handbooks, school bulletins, memos sent to parents, council meetings. These would vary from one school to another, but in many schools all procedures would be used. **(page 12)**

Q. But the central administration does not have a procedure for insuring that these are distributed to each of the students? A. That is correct.

Q. With respect to the regulations dealing with suspensions, it is mentioned that a notice is to be sent out within twenty-four hours; is that not correct? A. A letter to the parent.

Q. A letter to the parent or guardian? A. A letter to the parent or guardian that should be preceded by a phone call possibly, but the first written document would be the letter.

Q. Is there — strike that.

Would it be fair to say that the letters, in terms of their detail and what not, would vary as they are sent out? I mean, is there any standard format concerning the amount of detail that is contained in such a letter?

A. The amount of detail would have to be determined by the principal, because the incidents would vary. The length of explanation would vary.

Q. Now, the letter that I am referring to — this is Exhibit 2, Section A4. There is mention of a carbon copy of the letter to Pupil Personnel. Do **(page 13)** you know if that — for how long that letter remains in the child's file? A. No.

Q. You don't know how long?

Mr. Bustin: I want to object.

Mr. Roos: Let me back up a second.

By Mr.Roos:

Q. With respect to what happens to that letter when it arrives at Pupil Personnel, if you know? A. No, I don't know.

Q. Is there a file maintained in the schools on each individual child? A. Yes.

Q. What sort of things go into that file? A. We had basic biographical information showing name, address, birth dates, parents, their residence. We also have a health record that would include the immunizations a student would receive and any medical admonitions that we should follow in the event that the student might be diabetic or have epilepsy. We would also include in the file basic scholastic information, such as the grades received and also such factors as attendance and honors earned. Later in the secondary schools, we have such things as a request to send transcripts to college and the **(page 14)** various procedures relating to insuring that students receive an application and are handled expeditiously when they request such a transcript to be made.

In summary, it is a fairly comprehensive description of basic information.

Oh, I omitted in my earlier discussion the dates enrolled in the school if the student is new to the district, scholastic record that he had previous — at the previous school and any other pertinent information that would be forwarded in that. It could include medical information.

Q. Would correspondence to the family or guardians of the pupil be in the file? A. This would vary from school to school. In most cases correspondence, if it were of a significant nature, would be included. A simple note to the parent would not necessarily be included.

Q. Would a letter concerning a suspension or expulsion be in a file? A. In most cases I would think that it would be.

Q. I am referring now to, I think, high school students. What uses are made of the files? A. The files are for the professional use of the teaching and administrative personnel of the **(page 15)** school.

Q. Now, you mentioned that they are used in responding to college requests for transcripts and things of this sort. Is that a correct statement of what you said? A. Yes. We would indicate when transcripts were sent.

Q. Do you respond to requests from employers, the military, and others concerning — let me rephrase the question. Do you receive requests from employers and others concerning a given student? A. We sometimes receive requests for verification of graduation or things of that nature.

Q. Do you receive requests for recommendations from employers? A. You mean written formal requests?

Q. Written or oral — any sort of requests from employers. A. That could happen occasionally. More frequently we receive notification of employment possibili-

ties which are passed out to the guidance counselors and others. So students who are interested may apply.

Q. Concerning a student who may have graduated or who may have left the system and are **(page 16)** out in the job market or elsewhere, do you ever receive requests for information concerning them — recommendations, transcripts, or what not? A. I do not personally receive any such requests or have not. Whether an individual principal may, would be a question that you should refer to a principal.

Q. I see. In your experience as a principal and as a school administrator, do you know if those sorts of requests are made in general? A. Requests do come from time to time in school systems. In our response to such requests, we confine any information released to very basic items such as, they graduated, something of that nature.

Q. Now, concerning college recommendations. My recollection of applying for college is that colleges do ask for recommendations. Is that not so, more than just mere requests for transcripts? A. The college process places a heavy responsibility on the student to identify persons within the school system whom he would like to have write references for him to colleges. The process, therefore, is that the student takes whatever application form the college wishes and hands or **(page 17)** sends it to someone he chooses to write a recommendation.

Q. I show you a document that ended up in our files somehow. I would like you to identify and tell us what it is. It is entitled Columbus Public Schools, and the subheading is policy statement on discipline. You can run off a copy and make it an exhibit if desired. A. To the best of my knowledge this appears to be a document developed by a committee for possible action. Again, to

the best of my knowledge, I don't believe this has ever been instituted as policy in the district.

Q. Okay. We have made a further review of Exhibits 1 and 2 and noted that Exhibit 2, the February 21 document, refers to in the second sentence — I will read the second sentence.

"In another bulletin dated April 13, 1972, we mentioned adjustment (involuntary or disciplinary) transfers."

Would it be possible to get a copy of that?

A. Yes.

Q. And that bulletin is presently in effect also; is that so? A. Yes. **(page 18)**

Q. You previously mentioned that there were some changes under consideration concerning suspensions and expulsion procedures. Could you tell us what the procedure is for, presently utilized, to effect a change? A. Currently we are discussing whether every procedure is clear and whether the written regulations are sufficient. We have had discussions with our central office personnel and with our attorneys and would also inquire with the principals in the field, for they must administer whatever policies we have.

Q. What areas have been discussed as possibly being insufficient? A. We believe that our basic policy at the present is quite good. We think they are reasonable and do constitute appropriate procedures for dealing with questions of suspension.

As you indicated earlier in your questioning, however, we have not itemized the grounds for which suspension may be determined. We are proceeding on the basis that school rules, city law, state law, federal law, and Board of Education rules and regulations would, by the virtue of their existence, constitute such rules; but we have not

(page 19) explicitly stated in our instructions to principals. It is explicit in all our previous discussions, but not stated. That is one area that we think a policy should cover. Otherwise, we think the procedures as they currently stand are quite good.

Q. Now, who is involved in determining to revise the regulations? What procedure is utilized in revising these regulations? A. Well, we will have discussions with Mr. Dumaree, which is deputy superintendant, and Norval Goss, which is the person in charge of the Pupil Personnel Services, and a group of persons to ask their advice and assistance. When we reach concensus or if concensus is not reached, then the superintendant would decide what the course of action would be. In most cases, we are professionals and reach agreement readily.

Q. Do you keep any records of the number of suspensions and expulsions that are issued in a given time? A. The records on that would be kept in the Department of Pupil Personnel Services.

Q. You do have records computing the number of suspensions, for example, at Marion-Franklin and a number at Central and what not? (page 20) A. We have some records. I wouldn't state that in all cases we have perfect records.

Q. I see. What are the — we have been through suspensions and expulsions as being the common forms of discipline. What other methods of discipline are utilized by the Columbus schools.

I don't want to refer to things like staying after school to clean the blackboards, but I am thinking in terms of larger things such as transfers and things along that line.

A. We attempt to understand each student and provide environment in which he will be motivated to do his best. Discussions with him, with teachers and principals, and with the parent or guardian is a common way

of identifying what should be the best course of action. We might transfer a student to another school if we feel that it is in his best interest and in the best interest of the school system. We can have a discussion session in which we point out his deficiencies and that can be very effective. We ask parents to come to school and confront the student and teacher and the alleged incident in form of a process to get at why this is happening and hoping that the parent and home will assume their share of responsibility. (page 21)

As you mentioned, the staying after school and things of that nature are still very much a part of the scene. We also have the option of corporal punishment, which is the administration of a paddling to a student, if we think that is appropriate and would produce a solution to the problem. The basic approach is that the principal and teachers attempt to understand the student and why the student is acting as he is and develop a professional appropriate means of assisting the student to get the most from his education.

Q. Referring especially to transfers, are you familiar with any statutory authority that authorizes transfers? A. I can't cite the section, but we do have authority to assign a pupil to a school.

Q. Do you construe the power to assign a pupil to a school as giving you the authority to transfer a pupil for disciplinary reasons? A. We do have the authority to transfer for disciplinary reasons.

Q. And you refer to your lawyers to tell you what the authority is, I assume? A. State law, our administrative guide, Board of Education regulations itself, and the advice of (page 22) the attorneys are all part of what we rely upon.

Mr. Roos: I think we are finished. Thank you very much.

DIRECT EXAMINATION

By Mr. Crawford:

Q. Doctor, before you were asked to review what has been marked as Exhibit 1 and 2 — Plaintiff's Exhibit 1 and 2 — you referred to those exhibits as being directives from a popular school administrative body to principals in the school system. If a principal does not follow those directives, would that not following of the directive be an authorized or unauthorized act? A. It would be unauthorized. The principals are obligated to follow all the rules and regulations of the Board of Education and the administrative regulations of the central office.

Q. Also, you were asked to make reference to the files that were being obtained by this school system for each pupil. Reference was made to the information required by employers, military, colleges, from those files. Could you state what part of the files would be available to the persons outside of the school system? **(page 23)** A. We attempt to preserve the integrity of the individual whenever we discuss the record. What he has accomplished in school, basic information such as the grades received, attendance, entrance and leaving dates would be information that we would convey. It would be highly unusual if we would discuss whether a student was suspended or an item falling into that category. Increasingly we are constantly aware that they do have their rights. We must be. We want to give careful consideration so that we do not violate their rights.

Q. Is there a master card — let's say — that would follow a student throughout the school system — a central document? Would there be more than one document that would be considered as a master record? A. Master records would be more appropriate. We have an informational file in which various documents can be placed in them. For the most part, the basic information is contained on a single four sided document that is inserted into the folder.

Q. So if a letter was inserted in the folder, would that letter be part of that master card you were referring to? A. The letter would not be on the card, but **(page 24)** could be in the folder.

Q. You said the purpose of the school system was to preserve the integrity of the files. What did you mean by preserve the integrity of the files? A. We do not permit anyone in the professional capacity in the school system to have access to the files. That is the student's personal record and some of the information could be considered privileged and appropriate only to work with the student to improve his education.

Mr. Crawford: Mark that as Defendant's Exhibit 1 and Defendant's Exhibit 2, Defendant's Exhibit 3, 4, 5, 6, and 7.

> The documents referred to were marked for identification as Defendant's Exhibits Nos. 1 through 7 by the reporter.

By Mr. Crawford:

Q. Doctor Ellis, I will hand you what has been marked as Defendant's Exhibits 1 through 7 and ask you to please go through each one, and if you can, identify which exhibit you are referring to and please identify the exhibit. **(page 25)** A. Exhibit 1 is a summary of elementary school.

Q. When you say summary of elementary school, summary of whom? A. Work including the general academic —

Q. Are you referring to the pupil's summary? A. Yes. It gives the legal name and birthplace of the student, birthday, and includes a general academic rating and includes space for immunizations and medical information. It gives his home room and date when he was promoted

from elementary school to junior high school and high school. This such information as changes in residency, attendance data, personal test data, and also some personal traits point out — Mr. Goss, that section has been revised in the new item. I don't know if this is currently the one that should be introduced.

Q. Do you know when that Defendant's Exhibit 1 was used for the Columbus school system? A. The personal trait area is one that we have dropped from the most current record. Mr. Goss would have to state the exact time, but it seems to me it was the beginning of this school year, spring.

Exhibit 2 is Columbus Public Schools elementary and junior high school permanent record which gives residential data, parental data, again **(page 26)** the medical information; scholarship in terms of A, B, C, D, and F; terms of scholarship, test data; and space for remarks. Is that what you wanted?

Q. Yes. A. Exhibit 3 is Columbus Public Schools for senior high school, listing name, address, parents, and contains sections for the various subject areas listing the type of class, the grade received, and the unit of credit. On the back it includes a place to record whether transcripts were sent to various institutions such as colleges.

Exhibit No. 4 is Columbus testing profile. It is a document used to indicate how the student scores on standardized achievement tests.

Exhibit 5 is an attendance card which is made out for each pupil listing the pupil's name, address, teacher, parent, birthdate, room number, grade. It would be a record of the student's attendance. On the back of that particular card, we make reference to any home visits that are made.

Exhibit 6 is a Columbus Public Schools cumulative record folder. This is the folder in which the other documents to which I referred are placed, plus any other information considered to be appropriate for inclusion in the permanent record **(page 27)** folder. This is the latest edition of the cumulative record folder.

Q. Please identify that, Doctor. A. This is Exhibit 7. The date is 6-26-73. This is a document that revises previous cumulative records. This will be used for all new students and it includes the same basic information about birth data, parental data, residential data, individual test scores, elementary, attendance, scholarship, and then has many sections that indicate we have entered the computer world — a lot of spaces for the ten grade level, the eleven grade level.

I said level. I meant label. It starts with grade seven and provides a space in which the gummed label, which comes from the computer, can be attached to the folder, giving the student's grades. There is also a supplemental personal record that is part of Exhibit 7 which lists the extra curricular activity in which the student has engaged and the honor and recognitions and a space for a teacher to make comments, such comments to be dated and signed by the teacher.

Q. Doctor, you are making reference to Defendant's Exhibit 7. Is that document to replace **(page 28)** any other documents that were previously identified by you? A. Yes, I will have to go back and check which ones. They replace Exhibits No. 1 and 2.

Q. When is the effective date of the replacement take place? A. All new students will receive these, and we are in the process of converting at the present time to the others.

Q. Now, Doctor, previously you made reference to a file that will follow the student throughout his academic education in the Columbus School System. What document were you referring to as a single document that

followed them throughout? A. I could not state that only a single document would follow them throughout. Each student has a cumulative record folder in which the various documents to which I referred are placed. The basic information is Exhibit 7 or Exhibit 1 and 2 which are in the process of being phased out; but I do not think it would be appropriate to say only this would be in the cumulative product.

Q. Doctor, at the time this lawsuit was filed that made reference to a suspension that took place in 1971, what documents were in existence at that **(page 29)** time? A. Exhibits 1 and 2 and 3 would be in effect. Exhibit 6 would be. 4 and 5 would be in effect, and 6 would be in effect at the time that you stated.

Q. When an employer or college or military or any other authorized person requests information and the Columbus School System makes a request for data on a pupil, from what documents is this data to be obtained? A. From Exhibit 7 or all the exhibits I previously discussed.

Q. Are there any other documents from which those persons that I enumerated would obtain information from what would be in a pupil's folder? A. Not normally.

Q. Is there a policy in the Columbus School System about the documents that are to be used to give information to persons requesting it? A. I don't think we have that in writing.

Q. What is the policy? A. The policy is to release only information that would be considered standard information, such as the attendance, grades, test scores.

Q. Doctor, in my last question, you mentioned — **(page 30)** A. If you would hold it a minute, I would like to refer to the specific section in the administrative guide that gives instructions on that question. We have two sections that deal with the question of permanent records. Section 1016, entitled permanent records, cites the

fact that records shall be kept for each pupil in the Columbus Public Schools for the time of his first enrollment from his graduation from senior high school or withdrawal and indicating one cumulative personal record, the elementary permanent record, the junior high school academic, the senior high school academic record, and the Columbus testing profile. It also indicates that pursuant to and in accordance with sections 91 and 941 of the Revised Code, pupil's files may be microfilmed. Section 1016.03 of the Administrative Guide states that information contained in all official school records, including the permanent record data listed, Section 1016.01 of this Guide is confidential and shall be available only to employees of the Board, parents and guardians, law enforcement officials, and such other individuals as principals of each school may designate.

Q. Doctor, you listed five different areas of permanent records. Have you identified those **(page 31)** five current records previously? A. The records I have spoken to have previously been identified in the records presented.

Q. The question you made reference to about procedures that were being considered by yourself with respect to suspension procedures utilized in the Columbus School System — the new procedures to be adopted — what form would those new procedures take to make them? What would be considered the official procedures of the school system? A. The form that would be in effect would be bulletins from either the superintendant of schools, the deputy secretary of schools, or the division of Pupil Personnel Services, specifically enumerating the new procedures that would be in effect.

Q. Would that be similar to any exhibit that has been previously identified today? A. It would be similar to the Exhibits 1 and 2 that were first discussed in this deposition.

Mr. Crawford: I have nothing further. **(page 32)**

RECROSS EXAMINATION

By Mr. Roos:

Q. Doctor Ellis, I don't have all of those exhibits in front of me, but if my recollection is correct, there was ample room for comments at various places; is that a correct statement? A. That is a correct statement. Although, if you would attend a committee discussion, you would sometimes think that we could never provide enough room for comments.

Q. You could never provide enough room for comments? In those places, it certainly is not inconceivable that mention of a suspension or expulsion or transfer could appear; would that not be so? A. That could be so.

Q. Okay. One of the cards apparently is released commonly, or the information is released commonly is information concerning attendance; is that correct? A. That could be released, yes.

Q. If a child were suspended or expelled, would he not — how would that appear on his attendance card? A. As absent. **(page 33)**

Q. Now, where is this cumulative record, assuming that the child is still in the school, the Columbus School System — let's say hypothetically a senior at Marion-Franklin. Where would that card — that cumulative card folder — be kept? A. At the school.

Q. And would it be kept with any other documents, or is it physically separate from all other documents? A. It would be kept separate from other documents for convenience of insuring that the cumulative records were all in the same place.

Q. I see. If a child were transferred from one school to another, that would be reflected in one of the exhibits? That is in the cumulative record folder; is it not? A. Yes.

Q. Is there any reflection whether the transfer was voluntary or involuntary? A. I am not certain if we formally indicate whether it is voluntary or involuntary.

Q. But it might appear? A. I don't know.

Mr. Roos: Off the record.

(Discussion off the record.) **(page 34)**

Mr. Roos: On the record.

By Mr. Roos:

Q. Again I would like to show you something entitled cumulative personal record, and ask you to identify that. A. It is a record that has been in effect in Columbus Public Schools.

Mr. Crawford: It has not been marked; do you want to mark this as an exhibit?

Mr. Roos: This is just a copy of Exhibit 2. Let me refer to Exhibit 2.

By Mr. Roos:

Q. May I draw your attention to Defendants' Exhibit 2? A. It was Exhibit 1.

Q. Exhibit 1, Defendant's Exhibit 1. I now refer you to a section entitled Attendance Data, and a line that says nature of absence. Can you observe that? A. Yes.

Q. And there is an asterisk that refers to something down below. Could you tell us what this refers to? A. One, the student has been absent for more than fifteen days. The record provided for reference **(page 35)** numbers rather than writing out the reasons. The numbers are one, irregular; two, continuous; three, personal illness; four, family illness; five, truancy; six, out of town; seven, suspension; eight, indigent.

Q. To your knowledge, are those code numbers used in any other documents? A. Not to my knowledge.

Q. So those code numbers are especially coded just to that particular question? A. Yes.

Mr. Roos: Nothing further.

REDIRECT EXAMINATION

By Mr. Crawford:

Q. Doctor, referring you to Exhibit No. 7 which you stated is the new Columbus School System form which is to replace what has been marked as Defendant's Exhibit 1 and 2, is there anyplace on document No. 7 which makes reference to reasons for absence?

The Witness: Would you please read that back.

Whereupon the last question was read back by the reporter. **(page 36)**

By Mr. Crawford:

Q. Go ahead. A. There is no place where reasons for absence would be listed in document seven.

Q. One last question. We have made reference — both Plaintiff and Defendant have made reference to a book which has not been marked.

Please mark that as Defendant's Exhibit 8.

The document above referred to was marked for identification as Defendant's Exhibit 8 by the reporter.

By Mr. Crawford:

Q. Doctor, can you please identify what has been marked as Defendant's Exhibit 8? A. It is a document known as the Administrative Guide to the Columbus Public Schools dated January 2, 1973, which summarizes some of the basic rules and regulations of the Board of Education and appropriate law for the operation of the Columbus Public Schools.

Q. Is that document presently in existence? **(page 37)** A. This document is presently in existence and has been presented to and approved by the Board of Education.

Q. Is that document subject to revision during the course of the year at any time? A. The document is revised periodically. The typical cycle is annually before the beginning of the new school year.

Q. Doctor, can a document be supplemented by other documents from your office or the office of Pupil Personnel? A. This document can be supplemented. It is not intended to be the total compilation of policies or rules and regulations, but those that appear to occur most commonly.

Mr. Crawford: Nothing further.

RECROSS EXAMINATION

By Mr. Roos:

Q. Referring back, you mentioned that other things could appear in the cumulative record folder; is that not correct? Things other than the exhibit that has been mentioned? A. That is correct.

Q. Is it beyond belief that a letter of **(page 38)** suspension or notation of suspension or expulsion could appear?

Mr. Crawford: I object to the form of the question, beyond belief.

Mr. Roos: Let me rephrase the question.

By Mr. Roos:

Q. Could it happen? A. Yes.

Mr. Roos: Nothing further.

Mr. Crawford: Doctor you have the right to read this deposition prior to it being submitted to the court. You have a right to sign the deposition. If you wish to waive your signature and assume that the court reporter has gotten everything down, you may do so.

The Witness: I assume she did, but I would prefer to read it.

DOCTOR JOHN ELLIS

(Certificate of Court Reporter omitted in printing)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT
EASTERN DIVISION

Case No. 71-67

(Title Omitted in Printing)

Deposition of Phillip Fulton, the Defendant herein, called by the Plaintiff as if on cross examination under the statute, taken before me, the undersigned, Deborah M. Guedry, an official reporter within and for the State of Ohio, at 270 East State Street, Columbus, Ohio, on Wednesday, June 27, 1973, commencing at 1:00 p.m., and concluding on the same day; pursuant to the stipulations of counsel hereinafter set forth; said deposition to be read in evidence on behalf of the Plaintiff upon the trial of the above entitled cause. **(page 2)**

APPEARANCES:

PETER ROOS, Harvard Center of Law, 71 Kirkland Avenue, Cambridge, Massachusetts, appearing on behalf of the Plaintiff.

DENIS MURPHEY, of the firm of Patchen, Murphey, and Allison, 8 East Broad Street, Columbus, Ohio, appearing on behalf of the Plaintiff.

DALE CRAWFORD, Official City Attorney, City Hall, Columbus, Ohio, appearing on behalf of the Defendant.

THOMAS BUSTIN, Official City Attorney, City Hall, Columbus, Ohio, appearing on behalf of the Defendant.

STIPULATIONS

It is agreed and stipulated by and between counsel for the respective parties herein that this deposition may be taken in shorthand by Deborah M. Guedry, who may later, out of the presence of the witness, transcribe, or

cause said shorthand notes to be transcribed; that all formalities as to the notice of the time and place of the taking of the said deposition and the qualifications of the officer before whom taken shall be expressly waived. **(page 3)**

PHILLIP FULTON,

being duly sworn to testify the truth, the whole truth, and nothing but the truth, as hereinafter certified, deposed and testified as follows:

CROSS EXAMINATION

By Mr. Roos:

Q. Please state your name for the record? A. Phillip F. Fulton, principal of Brookhaven High School.

Q. And well, could you give us a brief summary of your work and educational experience? A. Seven years teacher of junior-senior high school, three years junior high assistant principal, two years a junior-senior high assistant principal, five years a junior high school principal, and four years a high school principal.

Q. And in 1970-71, were you the principal at Marion-Franklin? A. Yes.

Q. Were you the superintendant at the time—strike that.

You were presumably also the superintendant during February, March, and April of 1971?

A. I was the principal. I wasn't the superintendant, principal. **(page 4)**

Q. Excuse me. I apologize.

Can you tell us who the assistant principals were, and what their duties were at Marion-Franklin?

All questions that I will ask you from here on out will deal with the tenure at Marion-Franklin, and particularly March and April of 1971.

During that time, could you tell us who the assistant principals were, and what they did? A. Okay. Mr. Oscar Gill and Mr. Richard Collmer, they were delegated responsibilities as the assistants to the principal to assigned duties, specific assignments. They were given assignments in the areas of attendance, discipline, of student relations, curriculum; of course, all in conjunction with their duties associated with me.

Q. I see. In the week beginning March 8 of 1971, it is our understanding that there were disruptions in various activities at Marion-Franklin; is that correct? A. Yes, sir.

Q. Could you describe what transpired during that week? A. On Monday and Tuesday, there were numerous difficulties. That was March 8 and March 9. On March 10, in the morning—this was approximately **(page 5)** 9:00—there were activities being held. The club program was being held at that time. Students were assigned to either a club activity or to a study hall situation during that period. On Wednesday morning, the first incident involved four girls who had left their assignment and had gone into the halls and created a disturbance in the hall and who were challenged by a teacher.

Q. Do you have the name of the teacher? A. Mr. Waltman was the teacher's name.

Q. Could you give us the name of the four girls? A. I would have to go back and look for some of them. I can't tell you all four girls. I would have to try to find that. The students refused to obey the teacher and became belligerent. Two of the assistant principals were called at that time. The girls had just interrupted a club program. They refused to obey and follow the rules of the assistant principal.

I was called to respond to the situation, which I did. These same students that refused to report to class—eventually we did have a conference within the office with these individuals and attempted to find out what their problems were **(page 6)** and alleviate the trouble. They led a sit-in during fourth period on that day about roughly fifteen students. I can't give you the fifteen names. I do not have that information here. These were over by the end of the lunch period. Classes resumed and the day was completed.

During that day we had students—many students who left school with parents due to the tension generated by the incident. There was a pre-warning of this incident which had been given to my assistant principal, Mr. Gill, by telephone by some informed parents that this was going to happen. There was going to be an occurrence. So we did have some idea that there would be some kind of a disruption that day.

Q. We are still talking about Wednesday? A. Wednesday, March 10, 1970.

Also a student, who I can't identify but is not in this particular memo, told me that there would be some problems.

Q. Are you referring to a memo of some sort? A. I have a resume of the things that happened this particular week that you are talking about. This is a log that I kept.

Q. And you are referring to that now? **(page 7)** A. This is what I am looking at, yes.

Reverend Talley, a minister that was in that community, had called to ask and see me on Thursday morning, on Thursday, March 11.

Q. Sir, could I go back to Wednesday so we can sort of take this as we go along.

You mentioned a disruption by four girls. Were you personally present during the course of this? A. I discussed with the four girls their problem and sent them back to class without any discipline action, attempting to find out what was going on at that particular time. At that particular time the disruption activity continued in the club where it had started, and I eventually ended up in that club talking to the club and attempting to resolve whatever problems there were.

The club was filled with quite a number that didn't belong there, which was also a disruptive activity.

Q. But were you present at the time that this disruption took place? A. Yes, I was present.

Q. The entire time that it took place? A. I was not present in the hall. Mr. Waltman was present and Mr. Gill, and then I **(page 8)** eventually became involved as they brought them to me.

Q. I see. Then you took four of the girls back to your office and had a conference with them? A. Right.

Q. Were all four present at the time of the conference? A. Yes, they were all there.

Q. And no discipline resulted in this conference? A. No, we thought they had resolved part of whatever their problem was and returned them to their classroom activities.

Q. You remember the names of any of the girls? A. I think Deborah Fox was one. I would have to double check. According to my records Deborah Fox. Another one I know was a girl by the name of Vicki Sutton.

Q. Was Mr. Waltman—was he also at the conference? A. No, he was not involved with this conference.

Q. Okay. Proceed from the conference and sending the girls back. **(page 9)** A. We had a sit-in of about fifteen or so students who sat in the hallway opposite

our lunch room and auditorium whom we permitted to sit. We went about the school activities. By the end of the lunch period, it had dissipated. The students had returned, because they had not not been able to create the situation that they had hoped for. The school day resumed without difficulty from them, approximately period six through nine.

Q. Were the four girls involved in the sit-in? A. I can't really say whether they were right now. I don't remember. I assume that they were. I am sure that a couple of them were, but I don't have anything to document that before me.

Q. So we are now with this sit-in and it has dissipated. Go on from there. A. Okay. We completed that particular day. That night we had a basketball tournament, and we played our basketball tournament.

On Thursday morning, March 11, I was in my office with a parent. This is approximately 7:30, quarter to eight. From that time until about 9:00 I was with this particular parent. We were discussing problems relating to the community and some of his concerns. **(page 10)**

At 9:00 I was called again to the halls where the halls were blocked by students. This time white students formed a section at the door which prevented movement in the halls. This building is layed out so you can stop any movement in the hall by merely blocking one area.

I told the students to report to their home room several times.

Q. These are the white students? A. These are white students blocking the halls, right. The report was brought to me, which I observed myself.

Q. Excuse me. Were any of the white students suspended as a result of this activity? A. No, not of this activity.

The students were told to report to home room, which they refused to do.

Outside the building we had a group of over-aged for school, twenty to twenty-five I would estimate, strangers in automobiles with implements—who inferred to us that they intended to create some kind of a problem for our school people and for the school. Also in the building we had several—these were white over-aged or above school age people who were inside asking questions where such and such was **(page 11)** going to happen. They were asked to leave the building with reference as we would have them arrested if they did not. These people left the building and returned to their automobiles which continued to circle the school building.

A student by the name of Mike Sanborn appeared and became the leader of the white students in the hall. The white students were told to report to class again or leave the building. They decided they would leave the building, and they proceeded across the street, across Kobell Road where they formed as a group.

Q. Now, may I interject at this time. You told them to either go to class or to — A. Or to leave the building so we could go about using the halls to proceed to our classes. We could not move in the building. The building is completely disrupted, so we cannot ring the bell to have class exchanges for approximately eight hundred or nine hundred students that are ready to go to class.

At this time then, as we cleared the hall then for the passage of class, the black students took the place of the white students in the main hall. They refused to move so that we still had the same **(page 12)** kind of a problem existing. The halls were still blocked, and we had a black and white confrontation then.